25-43.

SUPREME COURT OF THE UNITED STATES.

No. 142.

SAMUEL F. B. MORSE, APPELLANT,

vs.

CHARLES H. BREWER, A. J. BALDWIN AND JOHN T. SMITH, OF BOSTON, AND FRANCIS O. J. SMITH, OF PORTLAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

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GIDEON, Print.

United States of America, Massachusetts district.

May Term, 1857.

At a circuit court of the United States, for the first circuit and district of Massachusetts, begun and holden at Boston, within and for the district of Massachusetts, on Friday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and fifty-seven, before the Honorable Benjamin R. Curtis, associate justice, Peleg Sprague, district judge:

WILLIAM B. CLUM, of Roxbury, in the county of Norfolk, and State of Massachusetts, &c., Complainant,
versus
CHARLES H. BREWER, A. J. BALDWIN, and JOHN T. SMITH, each of Boston, in the county of Suffolk, and State of Massachusetts, and Francis O. J. Smith, of Portland, in the State of Maine, Respondents. } In Equity.

The bill of complaint in this cause was filed in the clerk's office on the 18th day of August, A. D. 1855, and is in the words and figures following, to wit:

Circuit Court of the United States.

MASSACHUSETTS, *ss.*

To the Judges of the Circuit Court of the United States, for the district of Massachusetts.

William B. Clum, of Roxbury, in the county of Norfolk, and State of Massachusetts, a citizen of the United States, brings this his bill against Charles H. Brewer, A. J. Baldwin, and John T. Smith, each of Boston, in the county of Suffolk, and State of Massachusetts, and each citizens of the United States, and Francis O. J. Smith, of Portland, in the State of Maine, a citizen of the United States, and upon whom service and notice is prayed, at such time as he may be within the jurisdiction of this honorable court, or in such manner as this court may order.

And thereupon your orator complains and says, that heretofore one Samuel F. B. Morse invented an electric telegraph, denominated by him the American Electro-Magnetic Telegraph, and that said Morse secured the same by letters patent of the United States, bearing date on the twentieth day of June, in the year eighteen hundred and forty, which letters patent, having been twice surrendered, were finally reissued on the thirteenth day of June, in the year eighteen hundred and forty-eight.

And said Morse also invented certain improvements in said telegraph, which improvements he, said Morse, has also secured by letters patent of the United States, bearing date on the eleventh day of April, in the year eighteen hundred and forty-six, which last named letters patent, having been surrendered, were reissued on the thirteenth day of June, in the year eighteen hundred and forty-eight.

And the said first named patent being about to expire, without having yielded to the said Morse a sufficient compensation for the time, ingenuity, and expense bestowed by him upon the said invention, and in bringing the same into use, it was ordered by the Commissioner of Patents that the said first patent above named be extended for seven years from the twentieth day of June, eighteen hundred and fifty-four.

And your orator further complaining avers and shows, that by letters of attorney, duly executed and recorded in the Patent Office of the United States, according to law, one Amos Kendall was constituted the sole agent of the said Morse, with full power to sell and convey the exclusive right to construct and use the aforesaid patented invention, with all the improvements thereon.

And on the fourth day of April, in the year eighteen hundred and fifty-five, the said Morse, by deed of conveyance, duly executed and sealed by his said attorney, Amos Kendall, and duly recorded in the United States Patent Office, for and in consideration of the sum of one thousand dollars, then and there paid to him, said Morse, by your orator, William B. Clum, conveyed to said Clum the exclusive right to use the patented inventions aforesaid, and all the improvements thereon, in the counties of Plymouth and Barnstable, and along the Old Colony railroad, through Norfolk county to Boston, all in the State of Massachusetts.

And your orator further complaining avers, that said rights and privileges thus conveyed to him have, ever since said conveyance, been and still are his exclusive property.

And your orator further complaining avers, that said Charles H. Brewer, A. J. Baldwin, John T. Smith, and Francis O. J. Smith, combining and confederating with divers persons, at present unknown to the plaintiff, your orator, but whose names, when discovered, the plaintiff craves to be at liberty to insert in his bill, with apt and proper matter and words to charge and make them parties defendants to this bill, did, at Bridgewater, within said county of Plymouth, on the first day of July now last past, set up telegraphic poles, and did extend thereon telegraphic wires, connected with similar poles and wires, so also set up by them, extending through the towns adjoining to said Bridgewater, in said county of Plymouth, and connecting with telegraphic wires passing through the county of Norfolk and into the county of Suffolk, (which last named wires have been set up by the said John T.

Smith,) and have worked the same as a means of telegraphic communication, by means of and with the aid and use of telegraphic apparatus, formed and worked upon the plan patented as aforesaid by said Morse, and the exclusive use of which in said counties of Plymouth and Barnstable had been conveyed as aforesaid to said Clum; said apparatus being so used by them at Bridgewater aforesaid, and at each of the adjoining towns, and at Quincy, in the county of Norfolk; and by means thereof, and by the use of said poles and wires, both those set up by themselves and those set up by said John T. Smith, and of said Morse's patented machines, they, the said defendants, on every day since said first day of July now last past, have transmitted divers, to wit, one thousand on each and every day, telegraphic messages and communications from and to divers persons, over said wires, from and to said Bridgewater and said Boston, and between said places, and over portions of the territory of said county of Plymouth, for their own lucre, gain, profit, and emolument, receiving therefor, in the aggregate, from said first of July to the filing of this bill, the sum of ten thousand dollars.

And your orator further complaining, avers that said defendants further conspiring, do declare and avow that it is their intention and purpose, relying upon the false and unfounded pretences hereinafter set forth, or some of them, to continue and extend said telegraphic lines with similar poles and wires, and with similar appliances and aids of said Morse's patented machines, apparatus and invention, through various other towns and places within said counties of Plymouth and Barnstable, and through said counties with the intention and purpose of transmitting over and along said wires messages and communications, for pay and hire, at the employment of any person who may see fit to employ them so to do.

And the said defendants sometimes pretend and assert, that the said Morse, at some time previous to the year eighteen hundred and forty, conveyed to one Francis O. J. Smith (one of the parties defendants hereto, and under whom the other parties defendants hereto, one or more, or all, pretend to claim, and thereby justify their acts herein complained of) one undivided fourth-part of said Morse's invention, and of all his rights and property therein, secured by his, said Morse's caveat or otherwise, or that he, said Morse, then had or afterward might have, from any letters patent for the same, granted by the government of the United States, and within the limits thereof, thereby constituting, as said defendants pretend, said Smith part and joint owner with the said Morse of said invention, and all property consistent therein and incident thereto, within and without the limits of the United States, and in the same proportion; and pretending also that the same included a right to share in like proportion in all improvements that may be made

thereon by said Morse, and in all extensions which may at any time have been granted to him of said original patent.

And the said defendants also sometimes pretend that, by a mutual agreement made between said Morse and others, and said F. O. J. Smith, (one of the parties defendants hereto, and under whom the other parties, one or more, or all, pretend to claim and justify their acts herein complained of,) said agreement having been made, as they pretend, in the year eighteen hundred thirty-eight, each of said parties agreed with the others that all improvements, new discoveries, or other additions, in the use, structure, philosophical properties, or other parts of said invention, or for telegraphic purposes of any description, or in any way affecting said invention, he should communicate, as soon as might be practicable, to each of the said parties, and the same should be held and esteemed and owned as the property of each in the ratio of his property in the original invention, and that all letters patent that should be obtained therefor of any government should be, in that ratio, the property of each, and of his heirs and assigns respectively; and so said defendants pretend that, under said conveyances to said F. O. J. Smith, and said agreements between said F. O. J. Smith and others, they can hold a portion and share of the extension of said original letters patent, which was granted to said Morse on the twentieth day of June, in the year eighteen hundred and fifty-four.

And the said defendants at other times pretend and assert, that they have some sort of elder title or right in and unto the said patent right, which is now claimed by your orator, in and for the said counties of Plymouth and Barnstable, and that they derived that title in some way from said Morse, and that therefore they have good right to build said magnetic telegraph and work the same, and use said American Electro-Magnetic Telegraph, upon the plan patented by said Morse, (as above complained of,) notwithstanding the deed of said right to your orator as above set forth.

And the said defendants also at sometimes pretend and assert, that the patent right under which your orator claims, as above set forth, is absolutely void, as having been originally of no validity, while your orator avers and claims that it has been supported and established by a jury and the opinion of the Supreme Court of the United States in 1854.

And the defendants also sometimes pretend and assert, that the extension of said patent of said Morse, which was obtained in June, in the year eighteen hundred and fifty-four, was void, having been unjustly and illegally obtained, and that the right of said Morse, under his said original patent, had expired, and that the same was public property.

And the defendants also sometimes pretend and assert, that said

Amos Kendall was not duly and legally authorized to convey anything by any legal title to your orator, as above set forth, and that your orator acquired no legal title to said Morse's patented invention, or the extension thereof, by virtue of said deed.

And the defendants also sometimes pretend and assert, that said F. O. J. Smith (one of the parties defendants hereto, under whom one or more, or all, pretend to claim, and thereby justify their acts herein complained of) was possessed and owner of one-quarter part of certain improvements in said telegraph made by said Morse, which improvements he, said Morse, secured by letters patent of the United States, bearing date on the eleventh day of April, in the year eighteen hundred and forty-six, when said letters patent having been surrendered, were reissued on the thirteenth day of June, in the year eighteen hundred and forty-eight, and that the said patent is still in full force and validity, and that the defendants, or so many of them as claim under him, the said F. O. J. Smith, have right under said patent of said Morse, now last mentioned, to proceed and use and work said original patent of said Morse (upon which said subsequent improvements were made and patented) in said counties of Plymouth and Barnstable, either without compensation to the owner of said Morse's rights, under his extension in said counties, or with such compensation as might be deemed reasonable and proportionate, and pretending and asserting that they are not controlled by so much of the laws of the United States as declares that the extended patent shall operate as though the original patent had been for twenty-one years.

And the said defendants do further sometimes pretend and assert, that they have a right to transmit information and messages, be means of said Morse's patent, to and from places in said counties of Plymouth and Barnstable, or some parts thereof, to and from places in Suffolk county, over the wires of another line of telegraphic wires, (which have been already set up and extended by one John T. Smith, who is also one of the parties defendants hereto,) which telegraphic wires are now erected and extended through Norfolk county and into Suffolk county; and they also pretend that said Smith, by allowing them to connect their wires with his wires, and thus to transmit information and messages, is not infringing the rights or unjustly injuring the interests of your orator.

All which several pretences and assertions are, as your orator avers, false and unfounded, and together with all acts and doings in pursuance and under color thereof, are contrary to equity and good conscience, and tend to the manifest injury of your orator.

And your orator further alleges that he has no remedy, and no complete remedy without the assistance of a court of equity.

And your orator prays that the said defendants may, if they can, show cause why your orator should not have all the relief herein prayed, and that they may, upon their several and corporal oaths,

and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were here repeated and they particularly interrogated thereto.

And may it please your honors, the premises being considered, to grant unto your orator this honorable court's writ of injunction, issuing out of and under the seal of said court, to be directed to the said defendants to restrain them from proceeding in their said enterprise, undertaking and proceedings as above set forth, and in which they are now engaged as above described, against law and equity and the rights of your orator.

And also may it please your honors, the premises being considered, to grant unto your orator the court's writ of subpœna, to be directed to the said several defendants, and to each of their confederates, (when discovered,) thereby commanding them, and every of them, at a certain day, and under a pain therein to be limited, personally to be and appear before this honorable court, and then and there full and direct and perfect answer make to all and singular the premises; and further, to stand to and abide by such further order, direction, and decree therein as to the court shall seem meet.

And, as in duty bound, will ever pray, &c.

WM. B. CLUM.

PARK & RUSS,
Attorneys and Proctors.

Circuit Court of the United States.

MASSACHUSETTS, *ss.*

WILLIAM B. CLUM
vs.
CHARLES H. BREWER and als. } In Equity.

This day personally appeared before me, a commissioner of said court, William B. Clum, plaintiff in the above named bill, and made oath that the statements made in said bill, so far as made of his own knowledge, are true, and so far as made upon knowledge or information derived from others, he believes them to be true.

Given under my hand this twenty-third day of August, in the year eighteen hundred and fifty-five.

C. W. LORING,
Com. of U. S. for District of Massachusetts.

And on the 15th day of September, A. D. 1855, the following answers of Charles H. Brewer, A. J. Baldwin, and John T. Smith, were filed in the clerk's office, to wit:

The answer of Charles H. Brewer, one of the defendants named in the bill of complaint of William B. Clum, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies of the complainant's bill of complaint, contained for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to answer unto, says for himself, and not for the other respondents in said bill mentioned:

That it is true defendant did, on the 26th day of March, A. D. 1855, for a valuable consideration, purchase, by deed in writing, of one Francis O. J. Smith, a party defendant in this suit, the right, title, and property in one-fourth undivided part of the inventions and improvements patented to Samuel F. B. Morse, being the same invention and improvements described in the plaintiff's bill of complaint, inclusive of a like proportional part of all letters patent theretofore granted to the said Morse for the same, under the laws of the United States, and as well for an extension as reissue of the same, and as particularly set forth in said Smith's answer to the complainant's bill, which this defendant for this purpose refers to and adopts, and prays may be taken by this honorable court as a part of this defendant's answer to said bill.

And true it is said defendant has, conjointly with one Andrew J. Baldwin, also a defendant in this suit, constructed a line of posts and wire for telegraphic purposes from a point in the town of Quincy, through Braintree, Randolph, Stoughton, Bridgewater, Middleboro', Wareham, Sandwich, Barnstable, and Yarmouth, and are engaged in and extending the formation of said construction through the towns of Dennis, Harwich, Chatham, Brewster, Orleans, Eastham, Wellfleet, Truro, to Provincetown, and by lateral lines to Plymouth, Fair Haven, Falmouth, Martha's Vineyard, and Nantucket, all in the State of Massachusetts, and has inserted for use, and has used therein, the aforesaid patented invention of said Morse, under the authority and by virtue of said conveyance and purchase, so as aforesaid made of and by said Smith, fully believing and assenting, full, direct, and ample legal and equitable power in the said Smith to sell and convey said right to this defendant for this purpose, and as is fully set forth in said Smith's answer to the said bill of complaint, and averring and asserting this defendant's right, title, and legal authority so to use said invention and patent.

And this defendant further answers and says, that he has been informed and believes that the said license and permission to the said John T. Smith became and were soon thereafterwards known to said Morse and Kendall, and that it became known to them that the said John T. Smith was about to erect and use posts and wires under an execution of said license; and that immediately on receiving the said license he, the said Smith, proceeded to erect posts and wires thereunder, and soon thereafter, to wit, on the twenty-eighth

day of March, in the year eighteen hundred and fifty-three, he, the said Smith, caused advertisements of the form and effect following:

"MARINE MAGNETIC TELEGRAPH.—The undersigned respectfully announces that, by the assistance of the underwriters of Boston, he is now building a magnetic telegraph from this city to the outer station on Nantasket, which will supersede the Semaphoric telegraph. The present system will be continued until the line now erecting is finished. Subscriptions received at the Merchants' Exchange News Room.

JOHN T. SMITH."

To be published in the following Boston newspapers, to wit: The Boston Morning Post, The Atlas, Courier, Daily Advertiser, Evening Journal, Traveller, Transcript and Times. Which advertisements and notice were at once copied into the New York and Washington papers, and came to the knowledge of said Morse and said Kendall, and that they never dissented thereto or notified to the said Smith any dissent or disapproval, and thus assented to and acquiesced therein, if it were within their competency to assent or dissent.

And further answering, this respondent says that he has been informed and believes that the said Smith is still in the use of the same posts and the same wires which he, the said Smith, so erected in 1853, or afterward.

And said defendant further answers and says, that he knows nothing, except upon the information of others, respecting said letters patent of said Morse, so as aforesaid granted by the government of the United States, and does not admit the validity of the same, but requires the plaintiffs to prove the same in such manner as this honorable court shall direct. But this defendant further answers and says, that if said original and extended letters patent so in the plaintiff's bill described shall be here in court established, this defendant claims full right, power, and authority, as the assignee of said Smith, he being, as this defendant is informed and believes, joint owner of said invention and of said letters patent, as the same are in the plaintiff's bill of complaint, and said Smith's answer thereto described, to use and construct the said invention in and upon all the territory and lines in said complainant's bill of complaint are particularly described; and this defendant cannot and ought not to be hindered, molested, restrained, nor injured in the premises, being at all proper times willing and ready to account to the owners of the remaining three undivided fourth parts of said property in said invention for their full and proper share and proportional parts of all the profits and income of said use of said invention within and upon the limits aforesaid, as he is in equity and good conscience bound to do, and no further.

Of all which facts, allegations, answers, and averments, this de-

fendant prays may be inquired of by this honorable court, in such manner as shall be meet and proper, and this defendant denies all and all manner of unlawful combination and confederacy in the said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto and not herein or hereby well or sufficiently averred, confessed, or avoided, traversed, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

CHARLES H. BREWER.

R. CHOATE & SMITH,
Respondents' Solicitors.

UNITED STATES OF AMERICA,
District of Massachusetts.
Circuit Court.

September 14, 1855.

Then personally appeared before me, the above named Charles H. Brewer, and made oath that the matters and things above named are true so far as the same are stated of his own knowledge, and that so far as they are stated on the information of others, he believes them to be true.

H. W. FULLER,
Clerk of said Court.

The answer of A. J. Baldwin, one of the respondents named in the bill of complaint of William B. Clum, complainant.

The defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies of the complainant's bill of complaint contained for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, says, for himself, and not for the other respondents in said bill mentioned, true it is this defendant has constructed the line of telegraph as charged in the complainant's bill of complaint, and under circumstances and titles and facts and claims as are truly set forth in the answer of Charles H. Brewer, one of the defendants in this suit, which answer this defendant has read, and believes to be true, and adopts and prays may be made and considered as a part of this defendant's answer to the plaintiff's bill of complaint, this respondent being the partner and associate of said Brewer in the construction and use of the line of telegraph named in the plaintiff's bill of complaint, and claims to be justified by the decree of this honorable court in all the claims, rights, privileges, and

property and matters of defence to the plaintiff's bill of complaint so in said Brewer's aforesaid answer are set out and described.

And this defendant further answers and says, in respect to the extension of the said patent of said Morse, as in said complainant's bill is described as made and obtained in the month of June, A. D. 1854, this defendant is informed, advised and avers, that the same is void, and of no effect or validity, for reason that the same was fraudulently and wrongfully, and contrary to law, obtained by the said Morse under the fraudulent advice and counsel of one Amos Kendall, acting as attorney of said Morse, and named in the plaintiff's bill of complaint; and that by reason of the fraudulent suppressions and concealments by said Morse, under the direction of his said attorney, from the knowledge of the Commissioners of Patents when substantiating his the said Morse's claim and petition for said extension, of large assets in money and stocks denied by him, the said Morse, to wit: an amount exceeding five hundred and sixty thousand dollars, and by said Morse previously alleged to be in the hands of said Francis O. J. Smith, and for which sum and assets said Morse then had and was prosecuting a suit at law in the superior court of the city of New York against the said Smith, as of record will appear, and as this defendant is ready to verify as this honorable court shall direct and order; said assets being by said Morse so alleged to have been received by said Smith from the sales and use of his the said Morse's original invention, and the improvements thereon so patented to the said Morse, the said extension was fraudulent and void, and wholly inoperative in law and in equity, and contrary to good conscience, and the rights of the public to the free and unrestricted use of said invention from and after the expiration of fourteen years next succeeding the date of said Morse's original patent so granted unto him as described in plaintiff's complaint, and as this defendant is here in court ready to verify.

And this defendant further answers and says, and is informed and believes, that said Morse, acting under and by advice of said attorney, Amos Kendall, for the purpose of fraudulently, wrongfully and illegally procuring the aforesaid extension of his said original letters patent for the term of seven years from the twentieth day of June, 1854, as in the complainant's bill is alleged, did fraudulently, wrongfully and unjustly represent in writing, now on file in the Patent Office at Washington, to the Commissioner of Patents, under the oath required in such cases, in the words and figures following, to wit:

"The following recapitulation will show, at one view, all that has been received and expended on account of the invention, viz:

RECEIPTS.

Cash received for direct sales of patent rights, as per statement A 1..... $36,630 48

For stocks sold, statement B	24,200 00
For dividends on stocks	47,090 75
	$107,921 23

EXPENDITURES.

Cash paid for general expenditures, as per statement C	$1,683 19
Cash paid in litigation against infringers, D	8,037 68
" " " with F. O. J. Smith, E	3,757 39
" " purchase of Dr. Gale, interest, F	15,000 00
Expenses incurred on originating and developing invention, G	74,518 00
	$102,996 26

Value of unsold stock, should the patent be extended, as per statement A 1	$85,950 00
Balance of receipts over expenditures	90,874 97

"But this balance has accrued as well from the use of my second patent as the first; not a dollar having been realized but by the use of both patents. It is impossible to assign to each the precise portion which belongs to it; but, if it be assumed that half of these receipts are ascribable to the second patent, it will leave to me the sum of $45,437 48 as the remuneration obtained from the use and sale of my invention for the time, ingenuity and expense bestowed upon the same, and the introduction thereof into use.

"This statement is based upon the assumption that various stocks I now hold are actually of the value at which they are stated in the accounts, but I have good reason to doubt whether these stocks would sell for half the price estimated, if it were certain that the patent would not be extended; and if this be the correct view, then my remuneration for this invention is only $20,000.

(Signed) SAMUEL F. B. MORSE.

"Washington, D. C., April 3, 1854."

And this defendant further answers and says, that said Morse did at the city of Washington cause to be appended to the statement and representation in writing, so as aforesaid made by him to the Commissioner of Patents, the following certificate of the oath made and taken by the said Morse respecting said statements and representations, and as the same appears of record in the Patent Office at Washington, to wit:

CITY AND COUNTY OF WASHINGTON,
District of Columbia, ss.

On this third day of April, 1854, before me, the subscriber, a

justice of the peace in and for the said county, personally appeared the before named Samuel F. B. Morse, to me known, and made solemn oath, according to law, that the foregoing statements and accounts, and explanatory notes thereto appended, are just and true to the best of his knowledge and belief.

J. W. BACH, *J. Peace.*

This defendant further answers and says, that he is informed and believes, and is here in court ready to prove as this honorable court shall order, that in the month of December, A. D. 1851, the said Morse, together with one Alfred Vail, as joint owner of a fractional part of said inventions and letters patent, commenced a suit by bill of complaint in the superior court of the city of New York against the said Francis O. J. Smith, and made oath to the truth of so much of said bill of complaint as was therein stated to be of their own knowledge, and in said bill did claim to recover of the said Francis O. J. Smith, as assets justly due them, the said Morse and Vail, from said Smith for proceeds of sales made for them by said Smith of licenses to sundry persons to use said inventions and letters patent, and for commissions allowed and paid by said Morse and said Vail to said Amos Kendall for his services as agent and attorney in the sale and management of the interests and property of said Morse and Vail in said invention and letters patent the sum of five hundred and sixty-six thousand and five dollars and fifty-five cents, as this defendant is here in court ready to verify; but the said Morse in no wise disclosed to said Commissioner of Patents in procuring his, said Morse's, aforesaid extension, any such interest, assets, or perquisites, nor any part thereof, as additional to those derivable by him, and contained in his aforesaid statement to said Commissioner of Patents; but, as the defendant avers and believes, fraudulently and illegal, and contrary to his oath and obligation in the premises, designedly concealed the same, and all knowledge thereof, from the said Commissioner, although the said Morse well knew that said suit and claim and assets in said Smith's hands was at said period of applying for said extension, to wit, on the third day of April, A. D. 1854, still pending, and was being prosecuted by said Morse against said Smith, and was material knowledge to be presented to the Commissioner of Patents in determining and adjudicating the application and right of said Morse to said extension.

And this defendant further answers and says, in further evidence of the wrongful, fraudulent, illegal, and invalid extension of said letters patent of said Morse, said Morse did, in said application, and hearing before said Commissioner of Patents for said extension of said Morse's aforesaid patent, wholly suppress and conceal, designedly and fraudulently, from said Commissioner, the further material and important fact, that he, the said Morse, and the said Vail, had received from the said invention and letters patent, as

profits and perquisites, the sum of two hundred thousand dollars in money and stocks which the said Morse and Vail had then and previously allowed and paid to said Kendall, as commissioner on sales of said invention by said Kendall, for said Morse and Vail, although the said Morse and Vail had, in their said suit against said Smith, asserted and declared in the same, and demanded, and was then demanding in said suit, the payment to them by said Smith of said large sum. And this defendant avers, that if said facts had not been so fraudulently concealed and suppressed by said Morse from said Commissioner of Patents, but if said Commissioner had been well and truly informed that said Morse and Vail had received sufficient stocks and money from sales of said Morse's original patent and improvement, never authorizing and justifying the payment of so large an amount as commissions on sales made by said Kendall as two hundred thousand dollars, this defendant avers and believes, and here in court will establish, that said extension of said Morse's patent would not and could not have been granted or permitted, and that the same is therefore void, invalid, illegal, fraudulent, and of no effect in law or equity.

And this defendant denies all unlawful combination and confederacy in the said bill charged; without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently averred, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

A. J. BALDWIN.

R. CHOATE & SMITH,
Respondent's Solicitors.

UNITED STATES OF AMERICA,
District of Massachusetts.

Circuit Court.

Then personally appeared before me the above named A. J. Baldwin, and made oath that the matters and things above named are true, so far as the same are stated of his own knowledge, and that so far as they are stated on the information of others, he believes them to be true.

H. W. FULLER,
Clerk of said Court.

The answer of John T. Smith, one of the respondents named in the bill of complaint of William B. Clum, complainant.

This defendant, now and at all times hereafter saving and reserving to himself all manner of benefit and advantage of exception

to the many errors and insufficiencies of the complainant's bill of complaint, contained, for answer thereunto, or unto so much or such part thereof as this defendant is advised is material for him to make answer unto, says for himself, and not for the other respondents in said bill mentioned:

This defendant wholly denies each and all the allegations of the plaintiff's bill of complaint, wherein this defendant is charged with confederating or combining with any or all of the other defendants in this case mentioned, or with any other persons to injure or violate any of the rights, property, or possessions pertaining to the plaintiffs, this defendant denies all interest, contribution, agency, and ownership in the construction and use, or either, of any lines of telegraph, or posts, or wires, in or extending from the town of Bridgewater, named in the plaintiff's complaint, in any direction or to any point whatever. True it is, this defendant did, in the year 1853, under the license and permission of Francis O. J. Smith, one of the defendants named in this case, construct and build a line of telegraph posts and wires from Boston to Quincy, and thence to Hull, and use therewith and therein the patented invention of said Morse, whereof said Frances O. J. Smith then claimed to be and was, as this defendant believes, the sole and authorized representative and agent; said license was upon the terms, and under the circumstances, and for the purposes named and truly narrated in the answer of said Francis O. J. Smith to the bill of the plaintiffs in this case, and which answer in respect to this matter this defendant has read and adopts and believes to be true, and asks to make a part of this defendant's present answer; and true it is, that this defendant has received through and over his said line to the city of Boston from the termination of the telegraph line in Quincy, constructed by said Brewer and Baldwin, defendants in this suit, and has transmitted over his said line from Boston to Quincy to said line of said Brewer and Baldwin, sundry telegraphic messages or despatches, as this defendant claims he had full and legal right, title, license, and permission to do, under and by virtue of his said original and pending agreement and license of and from said Francis O. J. Smith, joint owner with and assignee of said Morse in the property of the invention and letters patent of said Morse in the plaintiff's bill of complaint described. And this defendant avers that he ought not in anywise to be hindered, interrupted nor restrained from continuing so to do under any pretence of exclusive right, title, or claim held or owned by any other party in said Morse's patents, until this defendant shall have first been shown to this honorable court to have unreasonably violated or disregarded the terms of said license so to him made for that purpose by the said Francis O. J. Smith. And this defendant further answering says, that the said license and permission to the defendant became and were soon afterwards

known to said Morse and Kendall, and that it became known to them that this defendant was about to erect and use posts and wires under an execution of said license. And that immediately on receiving the said license this defendant proceeded to erect posts and wires thereunder, and soon thereafter, to wit, on the twenty-eighth day of March, in the year eighteen hundred and fifty-three, he, the said defendant, caused advertisements of the form and effect following:

"MARINE MAGNETIC TELEGRAPH.—The undersigned respectfully announces, that by the assistance of the underwriters of Boston he is now building a magnetic telegraph from this city to the outer station on Nantasket, which will supersede the Semaphoric telegraph. The present system will be continued until the line now erecting is finished. Subscriptions received at the Merchants' Exchange News Room.

JOHN T. SMITH."

To be published in the following Boston newspapers, to wit: The Boston Morning Post, The Atlas, Courier, Daily Advertiser, Evening Journal, Transcript, Traveller and Times.

Which advertisements and notices were at once copied into the New York and Washington papers, and came to the knowledge of said Morse and said Kendall, and that they never dissented thereto, or notified to this defendant any dissent or disapproval, and thus assented to and acquiesced therein, if it were within their competency to assent or dissent.

And further answering this defendant says, that he is still in the use of the same posts and same wires which he so erected in 1853, or afterwards.

And this defendant denies all unlawful combination and confederacy in the said bill charged, without that any other matters or thing material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently averred, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. All which matter and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

JOHN T. SMITH.

R. CHOATE & SMITH,
Respondent's Solicitors.

UNITED STATES OF AMERICA,
District of Massachusetts.
Circuit Court.

September 14, 1855.

Then personally appeared before me, the above named John T. Smith, and made oath that the matters and things above named

are true so far as the same are stated of his own knowledge, and that so far as they are stated on the information others, he believes them to be true.

H. W. FULLER,
Clerk of said Court.

And afterwards, to wit, October 5th, A. D. 1855, the following answer of F. O. J. Smith, one of the respondents, was filed in the clerk's office, to wit:

The answer of Francis O. J. Smith, one of the respondents named in the bill of complaint of William B. Clum, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefits and advantage of exception to the many errors and insufficiencies of the complainant's bill of complaint, contained for answer thereunto, or unto so much, or such parts thereof, as this defendant is advised is material for him to make answer unto, says for himself, and not for the other respondents in said bill mentioned:

True it is, that the said Morse, mentioned in said bill of complaint, claimed to have invented, and, as such inventor, secured by letters patent from the government of the United States, in due form of law, to himself and his assigns, for a term of years, the exclusive property in use and of said invention of an electro magnetic telegraph, in the manner, and at the times, by surrenders and reissues, and extension, as set forth in the complainant's bill of complaint; and also, subsequently claimed to have invented certain improvements in said telegraph, and, as such inventor, secured by letters patent, as aforesaid, from the government of the United States, for a term of years, to himself and his assigns, and by a reissue of the same, the exclusive property in and use of such improvements, as set forth in complainant's bill.

But this respondent denies all knowledge of, and says he is a stranger to the truth of all such averments in said bill of complaint set forth as represent and assert, that "one Amos Kendall was constituted the sole agent of the said Morse, with full power to sell and convey the exclusive right to construct and use the aforesaid patented invention, with all the improvements thereon;" and, therefore, this defendant leaves and requires the complainant to make such proof thereof as he shall be able to produce.

And this defendant further answers and says, and avers, that any and all such power of attorney, agency, or substitution, by the said Morse, of and to the said Kendall, to sell and convey the exclusive right to construct and use the aforesaid patented invention, with all the improvements thereon, in any part of the United States, and without the concurrence of this defendant, would be, if so made, and is, in fraud and derogation of this defendant's rights, property and title therein and thereto, as joint owner and assignee

of said Morse, and contrary to equity and good conscience, and to the manifest wrong and injury of this defendant, and of all persons claiming by, through or under him, touching said invention, improvements and patents, in the complainant's bill mentioned, and as this defendant is here in court prepared to verify.

And this defendant further answering, denies all knowledge of, and says he is a stranger to, the deed of conveyance bearing date the fourth day of April, A. D. 1855, so made and executed with the said Clum, in the name and behalf of said Morse, by said Kendall, as in said bill of complaint is named, of the exclusive right to use the patented inventions aforesaid, and all the improvements thereon, in the counties of Plymouth and Barnstable, and along the Old Colony railroad, through Norfolk county to Boston, all in the State of Massachusetts; and therefore leaves and requires the said complainant to make proof thereof, as to this honorable court shall seem proper.

And this defendant further answers and denies that said Morse, in person or by attorney, had any right, title, authority or power, either in law or in equity and good conscience, so to make and execute, for any consideration whatever, unto the said Clum or any other person, any such deed of conveyance of said exclusive right to said patented inventions, within said territory, as is herein last referred to and mentioned; and further answers and denies, that said Clum has, at any time, or could acquire and hold, either at law or in equity, by virtue of any such deed of conveyance as is in said bill of complaint described, and so executed by said Kendall in the name and behalf of said Morse, any such exclusive right to use said patented inventions within the limits of the territory aforesaid; and for reason and because this defendant avers and says, that in the month of March, in the year of our Lord one thousand eight hundred and thirty-eight, in the city of New York, in the State of New York, for a valuable consideration, then and there paid and given by this defendant to the said Morse, the receipt whereof the said Morse then and there duly acknowledged, the said Morse did, by his deed of conveyance in writing, and under seal, of that date, bargain, sell and convey unto this defendant, his heirs and assigns, an undivided fourth part of the invention aforesaid, and of all of said Morse's rights and property therein, secured to him the said Morse, by reason of the caveat and evidence, or otherwise, in said last named deed mentioned, and which the said Morse had then and formerly filed, of his, said Morse's aforesaid invention, in the office of the Commissioner of Patents, in the city of Washington, to the end of, and for, obtaining letters patent for said invention, according to law. And this defendant further avers and says, that by said last named deed, said Morse did, then and there, also bargain, sell and convey unto this defendant, his heirs

and assigns, one undivided fourth part of all rights and property that he, the said Morse, then had or might thereafter have from any letters patent for said invention, granted by the government of the United States, and within the limits thereof; and, also, of five undivided sixteenth parts of all the rights, title, and property which he, the said Morse, then had, or might thereafter secure, or otherwise derive from and in said invention, without the limits of the United States, by letters patent or otherwise, except in the republic of Texas.

And this defendant further answers and says, that said Morse did, then and there, and in and by virtue of said last named deed of conveyance, expressly and in words, thereby make and constitute this defendant part and joint owner with himself, the said Morse, of said invention, and of all property consisting therein, both within and without the limits of the United States, in the proportions already specified, and, also, therein further stipulate, covenant and agree, that as soon as may be, after letters patent for said invention should be obtained from the government of the United States, or any other governments, he, the said Morse, would execute and deliver good and sufficient deeds of transfer of said parts, and of all rights and property incident thereto, including also a right to share, in like proportions, in all improvements that may be made thereon by him the said Morse.

And this defendant avers, that said deed of conveyance was duly recorded in the Patent Office of the United States, as he is ready to verify, and asks permission to annex a true copy thereof hereunto, and make it part of this answer.

Deed.

Whereas I, Samuel F. B. Morse, of the city and State of New York, am the sole and original inventor of a system of electromagnetic telegraphs for the conveyance of intelligence by words and signs, or by either, and to secure my legal rights and property to said invention, I have filed a caveat and evidence of my said invention in the office of the Commissioner of Patents, in the city of Washington, to the end of obtaining letters patent for said invention hereafter according to law. And be it therefore known to all to whom these presents shall come, that I, the said Morse, for a valuable consideration to me paid by Francis O. J. Smith, of Portland, Maine, the receipt whereof I do hereby acknowledge, have bargained, sold, and do hereby bargain, sell, and convey unto the said Smith, his heirs and assigns, one undivided fourth part of my said invention, and of all my rights and property therein secured by my said caveat or otherwise, that I have or may have from any letters patent for the same, granted by the government of the United States, and within the limits thereof. Also five undivided sixteenth parts of all the right, title, and property which

I have or may secure or otherwise derive from and in said invention, without the limits of the United States, by letters patent or otherwise, except in the republic of Texas; hereby making and constituting said Smith part and joint owner with myself of said invention, and all property consisting therein, both within and without the limits of the United States, in the proportions already specified. And I further agree, that as soon as may be, after letters patent for said invention shall be obtained from the government of the United States, or any other governments, I will execute and deliver good and sufficient deeds of transfer of said parts, and of all rights and property incident thereto, and to account from the date hereof to the said Smith in the proportions before named, for all the proceeds of sales of rights to use said invention in any place or country, that may accrue to me at any time, including also a right to share in like proportions in all improvements that may be made thereon by me.

In testimony whereof I have hereunto set my hand and seal, on this day of March, A. D. eighteen hundred and thirty-eight.

SAMUEL F. B. MORSE. [L. S.]

Witness: LEONARD D. GALE.

And this defendant further answers and says, that the said Morse, on the day and year last aforesaid, did, by his other agreement in writing, under his hand and seal, constitute, acknowledge and declare this defendant, and one Alfred Vail, and one Leonard D. Gale, and himself, the said Morse, to be joint owners in unequal parts of his, the said Morse's invention, and it being the same described in the plaintiffs' bill of complaint; and in the same writing, the said Morse did agree to and with each of the said parties, to wit: This defendant and the said Vail and Gale, and each of said parties, agreed with this defendant, and the said Vail and Gale did agree with the said Morse, and with each other, for the consideration in said writing expressed, in the words following, to wit: "That all improvements, new discoveries, or other additions which he shall make, or in any manner acquire, in the use, structure, philosophical properties, or other parts of said invention, he shall communicate as soon as may be practicable to each of said parties; and the same shall be held, esteemed and owned, as the property of each, in the ratio of his property in the original invention; and all letters patent that shall be obtained therefor of any government shall be in that ratio the property of each, and of his heirs and assigns respectively. And the expenses of obtaining letters patent for such improvements or additional discovery shall be borne by said parties severally in the ratio of their respective rights and interests therein, in all cases of the kind that shall hereafter occur."

And this defendant further answers and says, that in and by the

last named writing, made and executed by said Morse, under his hand and seal, conjointly with said defendant and with said Vail and Gale, it was stipulated, covenanted and agreed, as well by said Morse, as by this defendant and said Vail and Gale, in the words following, to wit:

"That excepting the negotiations which may be conducted without the limits of the United States by the said Smith, as hereinafter provided, and during his first mission abroad, no negotiation or sale of rights to use said invention, to or by any government or individual, and no contract in any way effecting the manufacture or use of the mechanism of said invention, shall be made or entered into by any of said proprietors, without the assent and concurrence of all the proprietors herebefore named, or of their legal representatives."

And this defendant further answers and says, that said last-named writing was duly recorded in the Patent Office of the United States, at the city of Washington, as he is ready to verify; and a copy of the same is hereunto appended, marked, and made a part of this answer.

Articles of Agreement.

These articles of agreement, made and concluded on this day of March, A. D. eighteen hundred and thirty-eight, by and between Samuel F. B. Morse, of the city and State of New York, of the first part, and Francis O. J. Smith, of Portland, in the State of Maine, of the second part, and Alfred Vail, of Speedwell, in the township and county of Morris, and State of New Jersey, of the third part, and Leonard D. Gale, of the city of New York, of the fourth part, witnesseth as follows, that is to say:

That in consideration of said parties being the joint owners, in unequal parts, of a certain invention of an electro-magnetic telegraph for the conveyance of intelligence by sounds and signs, or by either, to wit: the said Morse, as original inventor of said telegraph, and the other several parties named, as assignees of the said Morse, they have agreed, each for himself, his heirs, and assigns, except so far as either heirs or assignees are incapable of rendering the personal services by these presents contemplated, and each separately and not for the other, as follows, and each with the other, namely:

1st. The said Smith hath agreed, and hereby agrees, to proceed as soon as may be, at and upon his individual expense and advance, to take all legal and necessary measures for procuring and securing by letters patent the ownership and control of said invention to the said Morse, and his associate proprietors therein, including the said Smith, from the governments of Great Britain and France and their respective dependencies, and from such other foreign governments and potentates, excepting the republic of Texas, as

shall be practicable for him to do by ordinary vigilance and, in his opinion, of profit and advantage to said proprietors; and to this end, the said Smith shall, in the month of April next, as early in said month as convenient, sail for Europe, taking with him sufficient and necessary means to defray the expenses of travelling, and of government fees, and of other incidental services and charges, for the accomplishment of the purposes aforesaid, including the personal expenses of said Morse, in the manner hereinafter described.

2d. That the said Smith shall use his best and utmost endeavors to negotiate and sell the right to use said invention to any of said governments, or potentates, or to any person, or associations of persons, for the benefit and common account of the proprietors thereof; and all proceeds of such sales, first deducting the aforesaid expenditures which the said Smith shall incur in the premises, or by way of advances, shall be divided and apportioned among the proprietors of said invention in the ratio of their respective interests.

3d. That in negotiating any sales as aforesaid, the said Smith, while out of the United States, shall be at liberty and authorized to exercise his best judgment and discretion as to the price, terms, and manner of payment from purchasers, and in all things effect and do what he shall judge to be for the best interests and advantage of the proprietors, but in no case to incur any expense or debt chargeable to them without their previous authority and assent, or otherwise than is in this instrument specially provided.

4th. That said Smith shall account to the proprietors severally for their respective shares of the proceeds of all sales that shall be effected by him by virtue of these presents, at any and at all times, on demand, to the extent that the same shall have been realized in money or other property by him.

5th. That unless the said Smith shall succeed in effecting sales of said invention, in the manner before described, from the proceeds of which to refund his expenditures in the premises, the other co-proprietors are not to be holden or liable to refund or contribute to the payment thereof, be the same more or less; but the whole shall, in that event, be borne by and remain the loss of the said Smith to the extent that such proceeds shall be deficient.

6th. That the said Smith shall and will, at all times hereafter, during the continuance of said invention as a patent right, without other charge or compensation than the interest therein conveyed to him as aforesaid by said Morse, render his individual services as a counsellor and attorney at law to the said Morse and the persons associated with him in the ownership of said invention at the date hereof, as well in the managing, conducting, and transferring their individual interest in said invention as in sustaining the validity and repelling infringements of their titles thereto, and in the United States, after his return from Europe, as elsewhere, while

absent from the United States as before provided; but in all cases wherein by rendering such services the said Smith shall incur travelling or other incidental expenses, he shall be repaid the same by the party or persons for whose benefit or at whose demand such services may or shall be rendered as aforesaid; and when such services shall be for the common benefit of the proprietors of said invention, then such incidental expenses shall be paid by them in the ratio of their respective interests.

7th. The said Morse hath agreed, and hereby agrees, to accompany said Smith to Europe and such governments without the limits of the United States, besides England and France, as he and the said Smith shall hereafter determine to visit together—sailing with said Smith, for that purpose, in April next, as hereinbefore provided—to aid and assist in exhibiting said invention, and sustaining the validity thereof, as may be in his power, and devoting himself to the business of said proprietors in such foreign countries as he may visit with said Smith, for a term not exceeding three months after their arrival in Europe; but all of said Morse's personal expenses of travelling and incidental expenses during said term, and so long as he shall be engaged with said Smith in such foreign countries in the business of said proprietors, and in returning to the United States, shall be advanced, and borne, and paid by the said Smith, exclusively at his individual risk and loss, until the same shall be refunded to and realized by him, deducting the same from the proceeds of sales that shall be made by said Smith, in the manner provided in the preceding articles of this instrument.

8th. The said Morse is to furnish the said Smith the material and mechanism of one complete set of telegraphs, for use and exhibition in foreign countries, and provide another set for use and exhibition in the United States, and no charge or expense of the same shall be borne or paid by the said Smith; and the said Smith shall also be furnished with all necessary models and drawings that may be required abroad or without the limits of the United States, at the common charge and expense of said proprietors, in the ratio of their respective interests abroad, to be refunded as before provided.

9th. The said Vail hath agreed, and hereby agrees, to devote his personal services and skill in constructing and bringing to perfection, as also in improving the mechanical parts of said invention, until the same shall be made the property of the government of the United States, or otherwise be disposed of by said proprietors, and without charge for such personal services to the other proprietors, and for their common benefit; said services to be in accordance with the general direction and supervision of the said Morse.

10th. The said Gale hath agreed, and hereby agrees, at all times hereafter, while said proprietors shall have an interest in said in-

vention, to devote his professional services and skill, without charge or expense to said proprietors, in effecting improvements in the philosophical and physical qualities or properties of said invention, and in extending and perfecting the same by such chemical and other scientific experiments as may be suggested as serviceable and proper to be made by either of said proprietors with a view to enhance the value of said invention and of each proprietor's interest therein.

11th. All expenses and charges incident to the perfection of said Morse's application for letters patent from the government of the United States, and of obtaining said letters patent, shall be borne and paid by the said Morse and Vail exclusively, as are also all expenses incident to and growing out of the improvement and perfecting of the mechanism of said invention until said letters patent shall have been obtained.

12th. And each of said parties agrees with the other that all improvements, new discoveries, or other additions which he shall make, or in any other manner acquire, in the use, structure, philosophical properties, or other parts of said invention, or for telegraphic purposes of any description, or in any way affecting said invention, he shall communicate, as soon as may be practicable, to each of the said parties, and the same shall be held, esteemed, and owned as the property of each in the ratio of his property in the original invention; and all letters patent that shall be obtained therefor of any government shall be in that ratio the property of each, and of his heirs and assigns respectively. And the expenses of obtaining letters patent for such improvements or additional discovery shall be borne by said parties severally, in the ratio of their respective rights and interests therein, in all cases of the kind that shall hereafter arise.

13th. It is also agreed by all parties hereinbefore named, that all expenses that shall be incurred by either of said parties with the approbation of the proprietors of a majority of the property in said invention, and other than the expenses and services particularly specified in this instrument, and other than personal services, shall be borne by and assessed upon said proprietors, in the ratio of their respective interests—so far as the same shall be incurred for the common benefit, and in managing and conducting the common interests of such proprietors, but the same shall be recoverable from, and payable only in proceeds of said proprietors, sales of rights to use said invention, and not otherwise; and until such proceeds shall equal such expenses of any proprietor, such expenses shall remain at the risk of him who shall incur them, unless a written assent thereto shall be given previously by each proprietor.

14th. It is further mutually agreed by said parties, that all relations existing expressly or impliedly, between said Morse and

the government of the United States, relative to the use and sale of said invention to said government, shall be recognised and carried out in good faith by said parties conjunctively, in the full extent that said Morse is bound thereby, and for the common and joint benefit and interest of said proprietors in the ratio of their rights and property in said invention within the United States.

15th. It is also agreed, that excepting the negotiations which may be conducted without the limits of the United States by the said Smith as hereinbefore provided, and during his first mission abroad, no negotiation or sale of rights to use said invention, to or by any government or individual, and no contract in any way affecting the manufacture or use of the mechanism of said invention, shall be made or entered into by any of the said proprietors, without the assent and concurrence of all the proprietors hereinbefore named, or of their legal representatives.

In testimony whereof, the said parties have hereunto interchangeably set their hands and seals, on the day and year aforesaid, at said city of New York.

(Signed) SAMUEL F. B. MORSE, [L. S.]
FRANCIS O. J. SMITH, [L. S.]
ALFRED VAIL, [L. S.]
LEONARD D. GALE. [L. S.]

And this defendant further answers, and says that said Morse did not at any time, either during the pending of his application to the Commissioner of Patents at Washington, for an extension of his said first and original patent, nor since, until the fifteenth day of July, A. D. 1854, notify, suggest, or claim to this defendant, that this defendant was not fully and absolutely joint owner with himself, the said Morse, to the extent of one undivided fourth part of said invention, in all of said Morse's said letters patent, and as well as in the letters patent extending his original letters patent for the term of seven years, and bearing date as in the plaintiff's complaint is set forth, as in said Morse's original patent; but, on the contrary, said Morse had, by himself and his attorney, advised, consulted with, and treated this defendant's rights and title to said one-fourth part as concurrent and co-extensive with said Morse's own title, and had, accordingly, in very numerous conveyances to other parties, joined this defendant with himself, the said Morse, as a grantor of rights, title and property in and to all of said Morse's patents for improvements made or to be made, and extensions of the same that might be made under any and all subsequent letters patent that he should obtain therefor; but true it is, that said Morse did, on the said fifteenth day of July, write and transmit to this defendant a letter denying this defendant's legal title and interest in said extension of said Morse's patent, and according to this defendant, only an equitable title

thereto; said letter was in the words and figures following, to wit:

"PO'KEEPSIE, *July* 15, 1854.

"F. O. J. SMITH, Esq.

"SIR: I am advised that the legal title to my patent for the American electro-magnetic telegraph of June 20th, 1840, is, by the late extension of said patent for seven years from the said date, now vested solely in me. I have, notwithstanding, a desire that the pecuniary interest guarantied to you by my articles of agreement of March, 1838, in my first patent, should in effect, though not in form, inure to your benefit under the extension.

"For the simplification and more convenient conducting of my business transactions, I prefer not to make over to you any assignment of privilege under the extended patent, but shall retain the legal title entire in my own possession. It is, nevertheless, my purpose to pay over to you four-sixteenths of such sums as may be hereafter paid over to me in the sale of patent rights under the present extension, after the proportionate deductions of such necessary expenses and liabilities as may be or have been incurred in the business of the agency for conducting the sales of said patent rights. Mr. Kendall is still my attorney, and on conferring with him, all necessary papers for the purpose of carrying out my intent in this respect may be prepared.

"Respectfully, your obedient servant,

"SAMUEL F. B. MORSE."

To which letter this defendant replied, totally resisting said Morse's pretensions and constructions of this defendant's rights and title, and at no time subsequently has said Morse, in person, nor by letters, nor until through his said attorney, Amos Kendall, in his assumed negotiation and sale to this complainant, the said Clum, as in his bill is described, at any time renew, to the knowledge of this defendant, his, the said Morse's unjust pretensions of exclusive title in himself, of said extended letters patent.

And the said defendant says that said writing and agreement has been at all times, since the date thereof, and still is, in force and obligatory upon the said several paties thereto, except as modified by the re-sale by said Gale of his said interest and property to said Morse, and by the mutual contract of said Morse, Vail, and this defendant, as in writing hereto annexed and made a part of this answer will fully appear.

"These presents witnesseth, that Samuel F. B. Morse and Alfred Vail, by their attorney, Amos Kendall, of the first part, and Francis O. J. Smith, of the second, being sole owners of Morse's letters patent of the electro-magnetic telegraph in the United States, have agreed and hereby doth agree to and with each other

for the better and more effective management of their joint interests remaining unsold, or not under contract for sale, as follows:

"That said Smith shall have full and exclusive power to bargain, sell, and convey any and all routes for the construction and use of said Morse's above named patents, and of all his improvements thereto, not hitherto sold or placed under contract, within the following territory, to wit: in all of the territory of the United States bounded on the south by the route extending from Pittsburg to St. Louis, via Wheeling, Columbus, Cincinnati, and Louisville; thence to St. Louis by any route said Smith shall elect, and on the west and north by the western and northern boundaries of Illinois, Wisconsin, Michigan, and Ohio, and on the east by the eastern boundary of Ohio to the intersection of the telegraph route from Wheeling to Columbus, opposite Wheeling; also all within the boundaries of New York and the New England States. And that said Kendall, in like manner, shall have full and exclusive power for and in behalf of the first party, to bargain, sell, and convey any and all other routes for the construction and use of said Morse's patent, not hitherto sold, or placed under contract within all the remaining territory of the several States of the Union now existing.

"And the sales of each party within his said territory, made pursuant to the provision of these presents, shall be ratified and concurred in by the other party, from time to time, as may be required, and by due and legal process of conveyance.

"The manner of disposing of such lines and realizing cash therefor, shall be such as the respective parties shall in their discretion think best for the common interest; and each shall account to the other for money realized by him, whether from absolute sales or participation in the profits of construction, or in any other mode out of the common property: Provided, that neither shall be bound to account to the other for more than fifty dollars per mile, on any route, as the aggregate belonging to the owners of the patents.

"The terms of payment for sales made shall be twenty-five per cent. of the amount that shall be raised and paid as the first instalment, for construction purposes on the route sold, and a like proportion of every succeeding instalment until the aggregate shall have been paid. And no contract or sale shall be made to extend the omission of the first payment longer than nine months from the date of the contract, or to delay any succeeding instalment beyond the period of sixty days from the prior one. And no conveyance of the letters patent for any route shall be made until the entire price of purchase has been paid.

"Neither of said parties shall charge for his personal services, or expenses of himself, or of any agent he may employ, nor incur any liability in behalf of the other party, in effecting such sales beyond the requisite terms of a conveyance.

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"A report shall be made by each party to the other at the end of every September, December, March, and June, of all sales made by him during the quarter so ending; and of all payments received on sales, and such other particulars as either party may require. And payments shall then be made by each to the other, of all collections on the joint interests of said parties up to such periods, as follows:

"Said Smith shall pay said first party three-fourths of all such collections on sales as he shall have made, and of sums of money any way realized as aforesaid, deducting therefrom ten per cent. for commissions. And said Kendall shall pay said second party one-fourth of all such collections on sales as he shall have made, and of all sums so as aforesaid realized, deducting therefrom ten per cent. for commissions.

"And it is agreed that the arrangement therein stipulated for the management of said interests within the territorial divisions herein described, shall continue in full force between said parties and their legal representatives for the period of six years from the date hereof, unless sooner revoked by mutual consent.

"In testimony whereof, said parties have hereunto set their hands and affixed their respective seals, at the city of New York, in duplicate parts, on this twenty-second day of June, one thousand eight hundred and forty-seven.

SAMUEL F. B. MORSE. [L. S.]
ALFRED VAIL. [L. S.]
By their Attorney,
AMOS KENDALL. [L. S.]
FRANCIS O. J. SMITH. [L. S.]

"In the presense of—the words 'Thence to St. Louis by any route said Smith shall select,' on first page, between 14th and 15th lines, interlined before execution—
J. J. SPEED, Jr.,
E. CORNELL."

And this defendant further answers and says, that said plaintiff had full notice, knowledge and information, of this defendant's rights, claim and property in the premises, and did, on the tenth day of March last past, apply to this defendant to sell and convey to him, for a consideration to be agreed on, this defendant's one-fourth part of the exclusive property and interest in said patents and improvements, for and within the territory and limits in said plaintiff's bill of complaint described; and did, thereafterwards, on the thirteenth day of said March, renew his application to this defendant for such sale and conveyance of said proportionate part of said property; and did then and there, with full knowledge of this defendant's title thereto and of said Kendall's pretensions, as attorney to said Morse, receive and procure of this defendant a

proposal and offer of sale for the same in writing, and did thereafterwards, on the nineteenth day of said March, seek and request of this defendant an extension of this defendant's offer aforesaid to said plaintiff, of said sale and conveyance for the term of two months, which this defendant refused to give for any period beyond the then next ensuing Saturday night; and said plaintiff did further, on the twentieth day of said March last, again write this defendant by telegraph, and after well knowing said Kendall's aforesaid pretensions of right and power to sell to said Clum the whole and exclusive right to construct and use said invention, as follows, viz: "Please make me an offer—your lowest cash price—Mr. Kendall offers much less—says asking price about ten [meaning ten dollars] per mile for whole—[meaning for the whole of said patents, within said territorial limits, described in plaintiff's complaint]—but round offer will be considered—expect to hear from him to-morrow—will then communicate with you. Please answer." To which application this defendant refused to renew or extend this defendant's aforesaid offer of sale to said Clum, to any time later than the Saturday next ensuing, being the twenty-fourth day of March aforesaid, and informed said Clum then and there, that the defendant's rights and property aforesaid, for said invention in said territory, had been subjected from and after said twenty-fourth day of March, to the refusal of another party, meaning said other defendants in the case, to wit: Said Brewer and Baldwin, whose answer would be given on the then succeeding Monday, being the twenty-sixth day of March last past.

And your defendant avers, that said Clum then afterwards, to wit, on the 26th day of March last past, again applied to this defendant for the sale to him, by this defendant, of said one-fourth part of said patents and rights, and then and there informed him that said Kendall had offered to sell him, said Clum, the whole and exclusive right under said patents, within the territorial limits aforesaid; but said Clum then and there stated and admitted to this defendant, that he, said Clum, knew this defendant's title to said one-fourth part of said invention and said letters patent, and was desirous of purchasing the same, notwithstanding said Kendall's representations.

And this defendant further says, that the said Clum, having neglected to make said purchase of the said one-fourth part of the said invention and letters patent therefor, so belonging to and owned by this defendant, for use within the limits of the territory in said bill of complaint described, and within the period limited by this defendant's offer therefor, this defendant did thereafterward, on the 26th day of March last aforesaid, for a valuable consideration then paid this defendant, sell and convey unto the said Charles H. Brewer, one of the defendants in this suit, and did execute by deed, in due form, to said Brewer and his assigns, a transfer of "all my right,

title, and interest, as quarter owner and assignee, to the exclusive use of the several letters patent and inventions of Samuel F. B. Morse, of the electro-magnetic telegraph, including all renewals, reissues, and extensions thereof, and improvements made by said Morse therein, or that shall hereafter be made by him or granted unto him, upon and within the following described territory in the State of Massachusetts, to wit: on a line extending from the city of Boston, by way of Quincy, Bridgewater, Middleboro', and Sandwich, and thence to all points within the counties of Barnstable and Dukes, including the Island of Nantucket, and as fully as I, the said defendant, had possessed, or might use and enjoy the same—covenanting to warrant and defend the same against the claims of all persons claiming by, through, or under me," the said defendant.

And said defendant says said deed was made and executed in good faith, and with a full conviction and belief then and still entertained, and claimed and asserted by this defendant, that said title to said one-fourth part of all property and rights in the said invention, and of all improvements thereof made by said Morse, and of all letters patent granted to said Morse therefor for extending the same, as well as for such improvements, was both legally and equitably invested and held in and by this defendant, with full power to sell and dispose of the same, and without the concurrence of said Morse, as stipulated in the aforesaid articles of mutual agreement, by reason of said Morse, and said Kendall as attorney or agent for said Morse, claiming the right and title to sell the whole and exclusive title in said patents, without the concurrence or assent of this defendant.

This defendant further answers and says, that he knows nothing of his own knowledge relating to the construction by said Brewer and Baldwin, in the plaintiff's bill mentioned, or either of them, of telegraph posts and wire thereon within the limits complained of; but avers, if they have done so, there is in it no violation of any rights or privileges pertaining to the plaintiff; that this defendant has no interest in the property, whether in said posts or wire, nor has he in any way been a party thereto, except in and by the conveyance of this defendant to said Brewer, already last described above; that this defendant has no knowledge of the working of the line of telegraph, so complained of by the plaintiff in his bill of complaint, and the same has never been in any manner under this defendant's control.

This defendant further answers and says that he did, as assignee of the patents of the said Morse, give John T. Smith, one of the defendants in this suit, in the first part of the year 1851, a verbal license or permission to put up and use, at his own expense and risk, a line of telegraph from the city of Boston to the town of Quincy, and thence to the town of Hull, and use said Morse's in-

vention thereon as an experimental line, and to introduce the value of the patents of said Morse to the consideration of the merchants of Boston for marine despatches, and for the common benefit of all the owners of said patents, with the agreement, on the part of said John T. Smith, that whenever he should be called on by the owners of the patent aforesaid for such purpose, the said John T. Smith should pay or cause to be paid to said owners for the same, at a rate not exceeding ten dollars per mile for the use of said patents between said points; that said John T. Smith has not since been called upon, nor in any way has refused to pay said pro rata price for the said patents, within the knowledge of this defendant, because said line has not been extended beyond the limit of its original construction; that this defendant has no knowledge of any of the relations existing between said John T. Smith and said Baldwin and Brewer, respecting either line or both lines of telegraph in the complainant's bill mentioned.

And this respondent further says, that he believes, and has no sufficient reason to doubt, that said Morse and said Kendall had full knowledge of the line of telegraph so constructed by said John T. Smith, at or about the time of its construction; that the same was made public by advertisements in numerous newspapers; that ever since its completion, reports of marine intelligence have been constantly brought before the public, upon the wires and in the name of said line, and telegraph maps, long since published, have its termini and route specifically marked. And this respondent has no doubt he personally communicated with said Kendall on the subject of it, as, however, a matter of trifling consideration; but the same never entered into the mutual accounts of the patentees, for the reason that nothing was ever received by this respondent for it; and at no time did said Morse, or Kendall as his attorney, dissent or object, or make complaint of said license or the use of said line by said J. T. Smith.

And this defendant further answers and says, by reason and legal operation of the deeds of said Morse to this defendant, hereinbefore described, and of the mutual agreement of the said Morse and of his assigns, hereinbefore set forth, he is, and of right claims to be, invested with an absolute ownership of the said one-fourth undivided part of all of said Morse's hereinbefore described inventions, and of all his improvements thereon, and of all the letters patent therefor granted by the government of the United States to the said Morse, and as well for the extension of said original patent as for the improvements thereon by him invented and made; and that he did rightfully, legally, and effectively sell, convey unto, and invest the said Brewer with full power, right, title, license and permission to do and perform, as assignee of this defendant, all and singular the acts complained of in said bill of complaint; and that this defendant's deed aforesaid to said Brewer is, and of right ought to be,

as well in equity as in law, a full and complete justification and bar of the plaintiff's bill of complaint, as well in respect to all other parties defendants as to this defendant named in said bill of complaint; all of which he is ready to verify as this honorable court shall direct.

And this defendant denies all unlawful combination and confederacy in the said bill charged, and denies all violations of complainant's rights and property, charged in said bill; without that, any other matter or things material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently averred, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. The which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays to be hence dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained.

FRANCIS O. J. SMITH.

UNITED STATES OF AMERICA,
District of Maine.

SEPTEMBER 17, 1855.

Then personally appeared the within named Francis O. J. Smith, and made oath that the matters and things in the preceding answer stated are true, so far as the same are stated of his own knowledge and belief; so far as they are stated on the information of others, he believes them to be true.

Before me—

JAMES O'DONNELL,
A Commissioner for the Commonwealth of Massachusetts.

And thence this cause was continued to the October term, A. D. 1856, when, to wit, November 10th, 1856, Samuel F. B. Morse having been made a party complainant in this cause, by leave of court, files the following amended bill, to wit:

Circuit Court of the United States, district of Massachusetts—October Term, 1856.

WILLIAM B. CLUM
vs.
CHARLES H. BREWER and als. } In Equity.

And now Samuel F. B. Morse, of Poughkeepsie, in the State of New York, gentleman, having been by order of the court made a party complainant in this cause since the several answers of the respondents were filed to the bill of complaint originally exhibited therein, by leave of the court, files the following amendments to the said bill.

And thereupon your orator complains and says, that in the year 1837, having substantially made and tested, although not perfected, the invention described in the letters patent of the United States, issued to him on the 20th day of June, A. D. 1840, and referred to in the said original bill, and having filed a caveat therefor in the Patent Office of the United States, for the purpose of protecting his said invention, he proceeded to complete and test the same, with a view of obtaining letters patent therefor; and afterwards, and before he had obtained such letters patent, to wit, in the month of March, in the year 1838, your orator executed, with the said respondent Smith, and one Alfred Vail, and one Leonard D. Gale, the contract set forth in the answer of the said respondent Smith to the said original bill, and also on the same day executed the deed to the said Smith, set forth in the said Smith's answer as aforesaid.

And your orator further shows, that the said contract and the said deed were simultaneously executed, and related to the same transaction; that the contract aforesaid contains and expresses the several considerations given or covenanted by the said Smith to your orator, for the several interests conveyed by your orator to the said Smith by the said deed, and that no other consideration then, or at any subsequent time, passed from the said Smith to your orator for the interest so conveyed as aforesaid in the said deed.

And your orator further shows, that at the time when he made the said contract and the said deed, he contemplated obtaining letters patent for his said invention described in the said caveat, according to law, in the United States, and also letters patent for the same invention in other countries, according to the respective laws thereof; but that he did not contemplate and could not then know, and did not know, that he should be entitled to an extension of such letters patent as he might obtain for his said invention in the United States, or that it would be for his interest to apply for such an extension; and that neither by the said contract nor by the said deed did your orator convey or agree to convey to the said Smith any interest, legal or equitable, in any extended term that might, under the laws of the United States, be obtained by your orator, on the expiration of the letters patent then contemplated to be obtained in the United States, according to law, and pursuant to the said caveat; and your orator charges, that none of the parties to the said contract and the said deed had in view therein any other right or interest with respect to the United States, and to the invention covered by the said caveat, than such as might be obtained by letters patent of the United States, to be granted thereafter according to law for the space of fourteen years, pursuant to the caveat theretofore filed by your orator, and such letters patent for fourteen years as might be obtained by your orator for improve-

ments upon the subject-matter of the invention covered by the said caveat.

And your orator further charges, not only that the terms of the said contract and the said deed do not convey to the said Smith any interest in any extended term that might be obtained by your orator on the expiration of any letters patent therein contemplated to be obtained in the United States, but also that any such extended term, or any interest therein, was never the subject of any conversation, agreement, or bargain between your orator and the said Smith at any time previous to the execution of the said contract and the said deed, or at the time of the execution thereof.

And your orator further shows, that during the fourteen years which elapsed from the date of the said letters patent, granted to your orator in the year 1840, and until the extension thereof recited in the said original bill, your orator has never admitted that the said Smith had or could have any interest under the contract and deed aforesaid, in any extended term that might be obtained by your orator from the government of the United States, after the expiration of any original letters patent held by your orator, and that when the said extension of your orator's letters patent of the year 1840 was applied for and obtained by your orator, the said Smith rendered no service and took no part in any efforts to obtain the same, either as a co-proprietor, legal or equitable, to the right to have such an extension, or as a proprietor of any interest in the exclusive right to be obtained by such extension, or as a counsellor and attorney at law, acting under the provisions of the said contract, nor was he called upon in either of the said capacities so to render service, nor did your orator suppose or believe that he was either bound, or had any right under the said contract and deed, to call upon the said Smith so to render any service in either of the said capacities in the business of procuring such extension, nor did the said Smith offer to render any such service in any capacity, or pay, or offer to pay, any part of the expense attending your orator's application for such extension, although such application did, in fact, involve and require legal advice and assistance, and the services of counsel, and great trouble, labor and expense.

And your orator further shows, that after the said extension had been obtained by your orator, by his own exertions and at his own expense, assisted by persons other than the said Smith, your orator, having understood that the said Smith pretended to have the same right in the said extended term that he had enjoyed under the original term of your orator's letters patent of the year 1840, or some interest therein, and being desirous to avoid controversy with him, and to prevent him from causing embarrassment to your orator in dealing with the exclusive right secured to your orator

by such extension, wrote to the said smith the letter dated July 15th, 1854, set forth in the said Smith's answer to the said original bill, and made him the offer therein contained; and your orator charges, that in the said letter he did not design to admit, and did not in fact admit, that the said Smith had, or could of right claim, any title or interest, legal or equitable, in your orator's extended letters patent, or in the exclusive right thereby granted to your orator, or in the use of the invention therein described.

And your orator further shows, that extensions of letters patent for a further term of seven years, under the laws of the United States, are granted to the inventors alone, or to their personal representatives, and that no assignee, under the original letters patent, can have or claim such extension, and that the extension of your orator's letters patent, of the year 1840, was granted to inure, for the space of seven years from the expiration of the original, to the benefit of your orator, as the inventor of what was therein claimed according to law, and because your orator had, during the original term, without neglect or fault on his part, failed to obtain from the use of his invention a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the introduction thereof into use, and that your orator has made no grant, conveyance or contract, vesting in the said Smith any title, legal or equitable, to any part of the exclusive right secured to your orator by the extension aforesaid, whereby the said Smith could give to the said respondents, Brewer and others, any right or title to use the invention of your orator since the date of the extension aforesaid.

And your orator further shows, that by the 15th section of the contract, executed as aforesaid by your orator and the said Smith, Vail and Gale, in March, 1838, neither of the said parties could sell or convey any right to use the invention or machinery referred to therein, without the assent and concurrence of the other parties to the said contract; that the said Smith has undertaken to convey to the said respondents, Brewer and others, his alleged interest in the said invention under the said extended letters patent, without the assent and concurrence of your orator; so that even if the said Smith now rightfully has any title or interest, legal or equitable, in the exclusive right secured by the said extension, he is restrained in the exercise of his right by the contract aforesaid, and the said respondents, Brewer and others, are using the invention and machinery described in your orator's said extended letters patent, and also the invention described in your orator's letters patent of 1846, against the rights of your orator, and in violation thereof.

To the end, therefore, that the said complainant, William B. Clum, and your orator, may respectively have all the relief prayed in the said original bill, and that they, or either of them, may have the further relief of an account of the profits received by the

said respondents from the use of the invention and machinery described in the several letters patent aforesaid, in the manner and proportions to which they or either of them shall be adjudged to be entitled upon the facts herein set forth and disclosed by the said respondents; and that your orator may have the further relief of the injunction of this honorable court to restrain the said Smith from granting licenses or rights, or pretended licenses or rights, to use the invention or machinery described in your orator's said extended letters patent, or otherwise intermeddling with the exclusive rights of your orator under the said extended letters patent; and such further and other relief as the nature of this case and the rights of your orator and the said Clum may respectively require; your orator prays that the said respondents may severally answer the premises upon their corporal oaths, as if the same had been originally charged in the said original bill of complaint, and as if they were respectively interrogated thereto, and may stand to, abide and perform such decree as may be rendered by this honorable court herein.

SAMUEL F. B. MORSE.

GEORGE T. CURTIS,
Of Counsel with the Complainant, Sam'l F. M. Morse.

STATE, CITY, AND COUNTY OF NEW YORK, *ss.*

I, John Bissell, a commissioner for the Commonwealth of Massachusetts, residing in said city, do certify that, on the 7th day of November, 1856, the above named Samuel F. B. Morse personally appeared before me in said city, and subscribed the foregoing bill of complaint in my presence, and did depose and swear that the matters therein contained are true.

In witness whereof I have hereto set my hand and official seal.

[L. S.] JOHN BISSELL,
A Commissioner of the Commonwealth of Massachusetts, and Notary Public.

Circuit Court of the United States.

MASSACHUSETTS DISTRICT, *ss.*

BOSTON, *Nov.* 25, 1856.

Personally appeared the above named Samuel F. B. Morse, and made oath that the matters and things contained in the foregoing bill, so far as stated of his own knowledge, are true, and so far as stated on his information and belief, he believes the same to be true.

Before me,

H. W. FULLER, *Clerk.*

And on the 10th day of December, A. D. 1856, the answer of F. O. J. Smith to the foregoing amended bill was filed in the clerk's office, to wit:

The further answer of Francis O. J. Smith, one of the defendants to the original bill, and his answer to the amended bill of complaint of William B. Clum and Samuel F. B. Morse, complainants:

The said defendant, answering further, admits that said contract and deed referred to in said Morse's amended bill were executed on or about the same time, and were intended, to wit: the said deed to carry into effect, as far forth as might then be done, the purposes of said contract, contemplating, however, in said deed the execution of still other deeds by said Morse to said Smith as letters patent for said invention might be obtained therefor, "and of all rights and property incident thereto," as expressed in said deed; but this defendant denies that any limitation whatever was intended or contemplated by said Morse in and by said instruments, or either of them, upon said defendant's property and interest in said invention, and in any and all letters patent which said Morse might obtain therefor, to the extent of one-fourth part of the same, and by such limitation to vary such property and interest in any manner or degree from that retained by said Morse in the remainder thereof, and all such reasoning and inferences as said Morse's amended bill sets forth are by said defendant wholly denied, as unwarranted by and inconsistent with said Morse's aforesaid contract with and deed to said Smith, as the intent thereof is both expressed and implied therein.

This defendant avers that the extension of said letters patent beyond the term of fourteen years was frequently made, by and between said Morse and this defendant, the subject of conversation, and also the rights acquired under the same were jointly sold by them to other parties, authenticated and witnessed in writing under their hands and seals jointly and respectively, in repeated and numerous instances, both long anterior and down to the same month of June, 1854, when such extension was obtained, as of record in the Patent Office will fully appear, and as this defendant is prepared here in court to verify, and of which he appends two original deeds thereof, dated December 9th, 1853, and June 7th, 1854, in paper hereto annexed marked A and B, and contrary to the allegations in said Morse's amended bill aforesaid contained, and in perfect refutation thereof. These originals are exhibited as illustrations of a large number of similar proofs.

And this defendant further avers that said Morse, at no time before the actual extension of said letters patent, as is in his said amended bill set forth, either in words or by writing, expressed or indicated in any manner any denial or doubt whatever respecting said defendant's proportionate property and interest in common with said Morse in and to said invention, as the same might be protected in and by said extended letters patent, but at all times conceded and admitted the same, and at all times, and down to the day of the granting said extension, conceded the same to this defendant; and

this defendant further avers, that with a view of promoting the interest of each party owner therein, inclusive of this defendant, said Morse did, through his exclusive and irrevocable and sole attorney and agent, Amos Kendall, write to and request and advise this defendant, while and during the pending of said Morse's petition for said extended letters patent, to wit, on the seventh day of February, A. D. 1854, that no sale of territorial rights to use said invention should be made by the said Morse and other owners of said invention, inclusive of this defendant, "until after the question of extension is decided," thereby concealing from this defendant any design and purpose on the part of said Morse and of his said agent, to question or deny this defendant's proportionate right in and to the property of said extended letters patent, when the same should be obtained, and encouraging this defendant to believe said extension was being obtained for the common and joint and proportionate benefit and right of each of said owners, inclusive of this defendant.

This defendant further answering saith, that the letter of said Morse to this defendant, embodied in this defendant's answer to the plaintiff's original bill, and dated July 15, 1854, contained the first intimation or expression of a purpose that was at any time disclosed to this defendant by said Morse or by his agent, the said Kendall, to question or deny this defendant's legal title to and ownership of one-fourth part of said invention, as the same was and is, or might be protected in and by said extended letters patent, although during the period of fourteen years of said original letters patent, constant correspondence was being had by and between said Morse or his agent, Kendall, and this defendant, covering several hundred pages, and of and covering the joint and respective interests of said parties in said invention, and in the management thereof, and on receiving said letter last named this respondent replied thereto as follows :

FOREST HOME, NEAR PORTLAND, ME.,
July 18*th*, 1854.

Prof. S. B. MORSE:

SIR : I am in receipt of your letter of 15th instant. I confess I did not expect its contents, although knowing the quo animo of your adviser so well, it does not surprise me. He who could advise you to repudiate an agreement which he had solemnly entered into in your name, with your knowledge and under your sanction, but to countenance you in such repudiation he could not obtain so much as one word of approval or support from the court to whom in an evil hour he persuaded you to appeal to support the act, has neither conscience nor honor to consult in advising you to any other act, though it may place you upon record as a man in mortifying contrast with yourself as an inventor.

My own misfortune is, in my relation to you, in not having your own sense of right, instead of another's total and habitual proclivity to wrong, to deal with. Nevertheless, I will now, as I did in the former case of an attempted violation of the positive and clearly expressive terms of your contract with me, warn you, as you love the hope of a name for integrity in your dealings, to beware of this new attempt at technical strategy, for the purpose of arresting from me my clear and unquestionable rights.

As for your assumed guardianship of my interests, and dictation of terms upon which I shall, during the seven years of the renewed patent, have my interest and property disposed of, and at the pleasure of your agent, Mr. Amos Kendall, I can only look upon it with pity and disgust. My interest in that patent, to the extent of one-fourth, is as little at your control and disposition as your three-fourths are to mine. And I have this now to say to you, that if you persist in any attempt to dispose of a single right to use your invention, in reckless violation and disregard of the clearly expressed limitation of power to sell without my concurrence, set out in the 15th article of your deed of sale and agreement, and solemn covenants with me, of March, 1838, I will warn the country against the infidelity, and will place an injunction upon both yourself and agent that will forever stamp the act with dishonor.

Can it be that you have read that article recently, and, with any of the reflections of your own mind, have written your letter of the 15th instant?

Let me here repeat the clear expressions of that article. It says:

"15th. It is also agreed that, excepting the negotiations which may be conducted without the limits of the United States by the said Smith as hereinbefore provided, and during his first mission abroad, no negotiation or sale of rights to use said invention to or by any government or individual, and no contract in any way affecting the manufacture or use of the mechanism of said invention, shall be made or entered into by any of said proprietors without the assent and concurrence of all the proprietors hereinbefore named, or of their legal representatives."

Now, sir, upon your reputation as a man of common understanding, and upon your conscience as a man desiring to stand honestly before the world, can you persevere, in the face of an agreement thus clear, unequivocal, solemn and binding, to put forth a right to act in the "negotiation or sale of rights to use said invention" "without the assent and concurrence of all the proprietors," and of myself as one-fourth proprietor? And this because the "invention" thus constituting our proprietorship is protected by new letters patent extending beyond the duration of the protection to that "invention" which the first letters patent secured to us.

Does the quibble worthy only of your agent, and wholly unworthy

of your own original mind and heart, that, technically, as you set out in your letter, "the legal title to any patent for the American electro-magnetic telegraph of June 20, 1840, is by the late extension of said patent for seven years from the said date now vested solely in me," serve as a salve to your conscience? Sir, is it any more (even technically) "vested solely" in yourself than any grant of letters patent that you have received for the invention has been "vested solely" in yourself? And yet have you ever before denied my control of interest in common with yourself?

You say, "I prefer not to make over to you any assignment of privileges under the extended patent."

And did you ever make over any under the original letters patent, or any reissue of either except in the original transfer?

The only deed of conveyance I have ever had, or now suppose I can ever need, antedates every patent issued to you. And have you asked yourself how *has* that sufficiently potent to operate upon the "invention," and every grant of the letters patent for it, so as to vest me with one-fourth of all rights and privileges pertaining to the invention, and to every grant of letters patent for it, and yet, of a sudden, the legal title to the invention has become "vested solely" in yourself?

Out upon such short-sighted and unavailing strategy, conceived never by yourself, and forever unworthy of adoption by you, as you love your present and future fame. I have had occasion before you suffered your "attorney" to drag me to confront the groundless pretensions which he set up for you before an impartial judiciary of your own choice, State and vicinity, to say that, while I claim not to be the guardian of your reputation, (see my letter to you of May 19th, 1849, p. 101, of printed answer to your New York bill,) "it is not safe in the keeping of Mr. Kendall. Time will prove it so." And if any new act, other than what has already transpired in your New York suit, could be needed to verify my warning, it will be furnished in your letter of the 15th inst., and its sequences, if persisted in by you.

But, sir, turn again to the clear language of your deed of contract and conveyance to me of March, 1838, article 1. It tells you I am a joint owner with you of the "invention."

Article 12th tells you that "all letters patent that shall be obtained" by either of the owners for "improvements, new discoveries, or other additions which he shall make, or in any manner require, in the use, structure, philosophical properties, or other parts of said invention, or for telegraphic purposes of any description, or in any way affecting said invention," shall be held, esteemed and owned as the property of each in the ratio of his property in the original invention."

Now this goes not simply to the invention, as in the other article, but technically to the letters patent, for every addition of

parts, or addition "for telegraphic purposes of any description" which either owner should in any manner acquire.

I suppose your astute adviser and attorney will tell you that the extension of the letters patent for seven years is not an addition to your original invention "for telegraphic purposes" "in any manner acquired," and therefore I have no legal ownership in such letters patent, jointly and concurrently with yourself, requiring my assent to enable you to sell without a new deed from you.

And if I have not in the letters patent so acquired in this addition for telegraphic purposes, how is it that I have it in the invention still apart from the letters patent? You concede I have an equitable ownership.

Is there a line or a word in that whole instrument that distinguishes to limit my rights in the privileges and appurtenances of the invention, present or future, differently from the limitations it puts upon your own?

Sir, I must be permitted to say, such an attempted strategy in respect to terms so clear, and so explicit of both your own intentions and of my intentions, and of your rights and of my rights in that instrument, is unworthy of your adoption, as it will be unavailing to the scheming of your "attorney."

But I have not quoted all the record that must rise up in terrific and mortifying judgment to yourself, if you attempt to persist in the perfidy towards my rights and property shadowed forth so commandingly in your letter of the 15th inst.

In your deed of conveyance to me of March, 1838, additional to the instrument I have already quoted, the language of transfer to operate in future, as fast as you shall acquire letters patents, thus made joint property with like absoluteness in myself as in yourself, is as follows:

"And be it therefore known to all to whom these presents shall come, that I, said Morse, for a valuable consideration to me paid by Francis O. J. Smith, of Portland, Maine, the receipt whereof I do hereby acknowledge, have bargained, sold, and do hereby bargain, sell and convey unto the said Smith, his heirs and assigns, one undivided fourth part of my said invention, and of all my rights and property therein secured by my said caveat, or otherwise, that I have or may have from any letters patent for the same granted by the government of the United States, and within the limits thereof."

Can language be more explicit, to operate both presently and in future, upon any letters patent that you should acquire of the United States government, for said invention, by virtue of the caveat filed, "or otherwise?"

I am astonished that your mind could, by any mesmeric influence, even though that influence has its origin in the strongest affinities of demoniacal attorneyship, have become changed, as your letter

indicates, with a cupidity of power over rights to property once solemnly sold and transferred by you to me for a valuable consideration acknowledged then, and for years thereafter gratefully acknowledged to have been received by you. (See the testimony of your own letters in the New York trial, printed answer, page 13 and onward.)

Sir, I will not believe, that, on reflection, you will expose yourself in such an attitude before any court and before the world. Better far, if you love your reputation, that you had never seen a ray of lightning flash, from which to catch a spark of inventive divinity, than to have it thus converted into a hideous illumination to the world of a heart capable of coveting what, in all the variety of set phrases which can guard human transfers, you have so solemnly conveyed to another.

Go with me one step further, in that deed of transfer, and we will find this additional positive promise on your part, which your attorney, it seems, would now tempt you to violate, viz: "And I do further agree, that as soon as may be after letters patent for said invention shall be obtained from the government of the United States, or any other governments, I will execute and deliver good and sufficient deeds of transfer of said parts, and of all rights and property incidental thereto."

Not one deed but deeds, and as soon as may be after letters patent are acquired in all cases—not limited to one case; and yet, under false counsel that has persuaded you to suppose this language is not broad enough and strong enough to cover all future, as it has all past, letters patent granted to you from time to time for said invention, and without one line of a new deed being written therefor, and under date of the 15th inst., and in the face of high Heaven and your written promise, you write these pitiful words:

"I prefer not to make over to you any assignment of privileges under the extended patent, but shall retain the legal title entire in my own possession."

Can you reconcile such positions, the original promise, with your present preference?

I want no more troubles and no more lawsuits with you; and I hope, on calm reflection, the letter you have written me under the dictation of another, you will recal under the better and safer admonitions of your own heart.

I have not supposed, and, but for your attempted denial, I should not now suppose any new deed from you necessary to perfect a legal title in me, by operation of the 18th section of the patent laws upon your contract and transfer to me, and of the clear expressions of rights conferred by that law, so lucidly spread out in the opinion of Judge Story in the case of Woodworth vs. Sherman, 3 Story's Reports, 171, &c., and in the opinions of the Supreme

Court of the United States in the case of Wilson vs. Rosseau, 4th Howard's Reports, 646.

Suppose it were possible for you to maintain, legally, the construction that your former deed of assignment was not sufficient to operate, in presenti, as a transfer of one-fourth of the letters patent under the renewal; do you persuade yourself that a court of equity would hesitate an instant to compel you to execute the needful transfer to carry into effect your positive agreement and contract to execute deeds, as soon as may be, after obtaining letters patent? And what is to be gained to yourself in refusing to do promptly and willingly what you have solemnly agreed to do, and what a court of equity would force you to do unhesitatingly on their part? Precisely this case is contemplated and commented upon by Judge Story, in the first case cited, and by Justices Nelson, McLean, and Woodbury in the last case cited, with each of which your "attorney" must be familiar.

I have said that the legal right under the new patent is in me already—not by operation per se of the 18th section of the patent laws of 1836, but by operation of that section upon the clear intention and language of your assignment to me in the invention and all letters patent you should acquire for or affecting it.

Never before have you assumed to the contrary. In a large portion of our united deeds we have jointly granted and assigned to others an interest in all renewals and extensions, which are synonymous phrases, as Judge Woodbury has well defined. Are you not on record, in a hundred forms, acknowledging my legal title in all renewals and extensions concurrently with yourself? I know to the pet company of your attorney, between New York and Washington, there is no language employed that will carry any such contingent interests. But in most of our assignments subsequently, a clear transfer of the extended term is embraced, and will operate in despite of the proprietors of the letters patent, and that, too, without any new deeds being given.

Now, sir, I wish you to look at this subject calmly. It is one of seriousness to yourself, otherwise than in dollars and cents. At your hands I ask no indulgence—no favor outside of my rights. But of these I will not consent to be robbed, under cover of your reliance upon any attorney who never rendered one moment of assistance at the baptism of your invention, nor until after it had been cleared of swaddling clothes, and had been made to walk alone. Even you, after giving it birth, could not furnish nutriment for it to subsist upon, and it would have died famishing, had I not warmed into health and fed it when no one beside could be induced by you to do it.

Of this I speak now, only to keep in contrast the meanness of a cupidity which could influence you only in the person of an attorney. It has no origin in yourself. But in meanness by proxy a

double obliquity is perpetrated—the obliquity of cowardice as well as of cupidity, or the coveting of that back which has been once clearly, fairly, deservedly transferred to another. You, I am sure, must pause, ere you will be guilty of such two-fold dishonor, by adoption, even.

I cannot mistake that your letter was designed to feel out my views, to sound my temperament upon this subject. Hence I have unequivocally responded, so as I cannot be misunderstood. And I write, as I am willing the record shall be made up between you and me, for a long hereafter, if you are found capable of persevering in the course indicated by your letter. On the day I learn you decide to persevere, I will adopt the needful, though disagreeable, means imposed upon me by necessity of protecting my rights and property.

As a practical matter, involving the necessity for each granted to use the other patent for local circuits, how do you imagine I could be made to concur in any sale of the latter, if such sale is to be used as the leverage of wronging me out of my legal right of control over my interest in the original and first invention, as you term it?

No man will desire to buy a right to use the renewed patent, unless he can have a right to use the local circuit patent, and my concurrence in sales of this last is undeniably requisite.

I know Mr. Kendall alleged I had sold rights to Mr. Alden. I did not then, 13th of June last, see to what strategetical use he was reaching forward to in my answer. But he got the answer according to the fact—that it was untrue that I had ever made a sale of any interest that had not been previously separated by consent, or by express provision of existing contracts. Had I done so, even, it would have been a clear violation of the limitations put upon our respective rights by the contract of 1838, and would not authorize another violation of it on your part. Neither in law nor in equity will one wrong stand as authority for another wrong.

Sir, live up to your contracts with me, and it is all I ask—all I expect.

If you decline to do it, my alternative is a plain one. But I shall extremely regret this new embarrassment upon sales of the patent, and another profitless seven years' war between us.

It lies wholly with you to determine the direction the matter shall take between us.

As for Mr. Kendall's ownership, I never assented to it. My utmost concurrence was given to him only as your attorney and agent. I want no such partner in the proprietorship.

Very respectfully, your ob't serv't,

FRANCIS O. J. SMITH.

To which said Morse replied as follows:

PO'KEEPSIE, *July 25th*, 1854.

SIR: Your letter of the 18th instant is received, and I have carefully considered its contents.

How far your strictures upon Mr. Kendall are warranted, you may judge from the fact that he was not my adviser in the step upon which you comment. The adviser alluded to by me is a stranger to you, of great experience and acuteness in the law.

My letter to you of the 15th instant was not dictated by any conviction that you have any just, legal, or equitable claim to an interest in my second patent, or in the extension of my first, but originated in a disposition on my part to concede to you, for the sake of peace, even what I believe you have no equitable title to—all, indeed, you might have any pretext for claiming, but in a shape most for the benefit of all parties.

Since, however, my proposition is not acceptable to you—since, indeed, you have requested its recall, I hereby take back any and everything in my letter of the fifteenth instant which can be construed to concede to you any right to an interest in any invention of mine, (except that described in my first patent,) or that can be construed to concede to you any interest in the extension of that patent.

I shall proceed, however, with as little delay as possible, to submit all the facts of the case to the ablest counsel whose services I may be able to command, and shall be governed entirely by their advice, of which you shall have the earliest and fullest notice.

Respectfully, your obed't serv't,

SAMUEL F. B. MORSE.

FRANCIS O. J. SMITH, Esq.,
Portland, (*Maine.*)

The defendant further answering, saith, that he again wrote the said Morse, and under date as follows:

"PORTLAND, *April* 30, 1855.

"Prof. S. F. B. MORSE:

"DEAR SIR: On the 15th of March last I wrote to Hon. Amos Kendall, as your agent, as follows:

" 'Shall we continue passive in respect to the piracies upon our patents in California? Or will you suggest a mode of procedure for our union upon against them?

" 'The New York and Erie line, as also Philadelphia and Louisville lines, should be proceeded against.

" 'Are you yet prepared and disposed to unite with me, through your principals, also, in proceeding against them?'

"On the 17th of March last, I received from Mr. Kendall a reply, in which he says:

"'That I shall endeavor to vindicate Morse's patent right in California. I leave to you the duty of protecting your own, if any you have.'

"On the 22d of March I acknowledged the receipt of the above-named reply, and wrote him as follows:

"'I am in receipt of your extraordinary letter of the 17th inst. Do you mean by it to repudiate the longer existence of a joint interest between Professor Morse, Mr. Vail, and myself, in each of Morse's patents, or in any of them?

"'If not, do you mean to repudiate the obligation of the articles of original agreement between Morse, Vail, Gale, and myself, prohibiting either to sell interests, without the concurrence of all, to use the Morse patents?

"'I make these inquiries in order that I may proceed understandingly in vindicating my own rights separately, if no longer joint ones are recognised.'

"On the 29th of March, Mr. Kendall replied as follows:

"'If you cannot make out my views as to your present relations to Morse's patents from my letters heretofore written, I despair of enlightening you on that subject.'

"I now desire to recall to you, in view of these strange enunciations of Mr. Kendall, (who is too cautious to refer any particular letter of his own to me for an exposition of his exact meaning,) my last correspondence with you, in which you promised that you would advise me whether, upon full consultation with counsel, you should or not persist in the view imposed upon you, that although I might have an equitable interest, yet you were advised I had not a legal interest in the renewed or extended patent that had been granted to you for the telegraph.

"I have received no such information as you promised, and only the equivocal letter of Mr. Kendall which I have copied.

"I learn, however, that he offers to sell, not only the original, but the improvement of 1848, without any reference to my title, and the exclusive right. Is this by your direction or concurrence? If you do deny it, do you deny your obligation to make the title good in me to that proportionate part, on this my request for you to do so, by a sufficient and valid writing, pursuant to your original agreement of 1838, with and to your deed also to me of the same date?

"I ask these questions in all kindness of feeling and purpose, that I may not proceed to enforce my rights rashly nor prematurely towards yourself. I ask the information of you because you promised in due time to give me a definite answer upon the subject. I ask it also of you because I know how little Mr. Kendall keeps you posted up in respect to his exact course of proceeding

towards me until driven to do so by my own correspondence with you.

"I shall deeply regret the necessity of more litigation with you than he has already occasioned; as with all his boasted promptitude in the matter, he has kept both of us involved, certainly against my will, and I doubt not to your regret, for several years, without for a final decision. But if necessity compels me to either defence or attack, you know my motto is, like that of the patriots of 1812, 'Millions for defence; not a cent for tribute.'

"Will you do me the favor to answer me freely and fully upon the topics specially inquired of; and I remain, most respectfully, your obedient servant,

"FRANCIS O. J. SMITH."

"P. S. I expect to be in New York on Thursday and Friday of this week, and if you can answer me there, on either day, care of my counsel, E. F. & G. W. Chester, esquires, you will oblige me."

To the preceding letter said Morse replied as follows:

"PO'KEEPSIE, *May 3d*, 1855.

"SIR: Yours from Portland of 30th ult. is just received. It is impossible for me to reply intelligently to your queries, without consulting my agent, Mr. Kendall, for explanation of the position of matters between you and us.

"I am happy to see in your letter even the expression of 'kindness of feeling and purpose,' and should be still more so to see the evidence of it in your acts.

"You cannot be ignorant of the position of antagonism, both in feeling and purpose, and manifested even during my efforts to obtain the extension of my patent of 1840, in which extension you now desire to participate.

"But let that pass. Whatever is legally or equitably yours, by agreement or otherwise, I shall yield so soon as it is determined what that is.

"We are now in the law, to have settled by the courts certain positions of our rights. I can do and say nothing without advice of counsel, in this position of things. I may venture, however, to say, that so soon as you are ready for an equitable decision of all our differences, and the settlement of terms for a separation of interests by an arbitration, with power definitely and finally to settle everything between us, I shall be most happy to unite with you in bringing matters to a speedy and final issue.

"In the meantime, I remain, most respectfully, your obedient servant,

"SAMUEL F. B. MORSE.

"FRANCIS O. J. SMITH, Esq., *New York*."

On the receipt of said last-named letter, this defendant answered said Morse as follows:

"NEW YORK CITY, *May 7th*, 1855.

"Prof. S. F. B. MORSE:

"SIR: I am in receipt of your favor of 3d inst. While your only known oracle, Mr. Kendall, remains Delphic, and you are unable to inform me, without his guidance, whether you do or do not deny to me the legal title to one-fourth of your invention in the extended patent, what am I to do? Remain passive, and let time run away with all there is of remaining value in the patents?

"I think this is more than I can be expected to do; and especially as Mr. Kendall is offering, as I am informed, to sell exclusive rights in the patent, even between points directly infringing the pre-existing rights and business of the Boston and New York line.

"But you say I manifested both feeling and purpose of antagonism towards you, 'even during my [your] efforts to obtain the extension of my [your] patent of 1840, in which extension you now desire to participate.'

"To this I simply wish to put on record my unqualified denial. Upon whatever authority you make the statement, I pronounce it false and groundless, and I will thank you to give me information of your authority. So far from it, Mr. Kendall's correspondence and mine with him will show that he had my concurrence to both advice and action, so far as he desired, unto the end. And never, never, during that period, did he let fall a shadow of purpose to question or deny my full legal participation with you in all the benefits of the extension, but manifestly assumed it throughout as a common interest that was being promoted. At his duplicity in this I ought not to be surprised. It is your own sentiments of justice and your own self-respect that I have alone confidence in, at every emergency, when Mr. Kendall's sinister designs have ripened into development. And now such seems to be his purpose, without any manly avowal of it to me, to question my legal title to one-fourth of the extended patent. I have, before proceeding according to my knowledge of my rights, to involve you and myself in new litigation on the subject, been disposed to appeal to you to render it unnecessary.

"As for a settlement of our differences, time and again have I offered it by arbitration. Our correspondence will tell by whose equivocations all such results have been defeated. The last proposal of the kind perhaps you have forgotten or never knew of. It was a distinct proposal from your own counsel, Mr. Lord, to my counsel, Mr. Chester, to take the whole dispute between us, point by point, and agree between themselves what would be just and proper between us, and so say to us respectively, and if aught re-

mained worth litigation, we could act our pleasure. To this I assented. My counsel made known his authority, exactly as broad as Mr. Lord sought it, and then, forsooth, from some to us inscrutable reason, Mr. Lord retreated from his own proposal, and the whole matter dropped back again into the law's delay.

Now, as to a settlement, if it were only guided by your own and my own feelings and judgment, one-half day would close up all differences, I have no doubt. The time never has been when I have been unwilling to sit down with you, toe to toe, and compare notes and differences, and try, at least, one by one, to dispose of them amicably. But then you say you don't sufficiently understand your own business; your agent's interposition is indispensable—and yet you know that between him and me has been created a gulph that smells of brimstone.

"I know that your disappointment will be immense whenever the details of our differences are fairly balanced. I know, then, in the offer I made, of taking, in full relinquishment of all my interests in the patents throughout the Union, past, present, and to come, except where stock has been issued, and except the Lake Shore line, fifty thousand dollars, I have offered what you will deeply lament not accepting, both because of the intrinsic value when unconditionally amalgamated with your own.

"The claims of the patentees upon the N. Y. and E. R. R. Company, and upon the Philadelphia and Louisville line, and upon lines constructed already, without authority, in California, would, on a division of proceeds, pay more than half of all that sum to my proportion. Then add my interest in the lines that must shortly spring up between the Atlantic lines and the shores of the Pacific, probably by aid of Congress at its next session—the yet unsettled claims on all the O'Reilly lines in the West, except Louisville and St. Louis, and the freedom of all your own interests in all settlements of the past, and of all projects in the future, and you cannot reason yourself out of the conviction that my offer is a most advantageous one to yourself and Mr. Vail. I will not ask any embarrassing payments.

"Give me one-fifth in money, and the remainder in magnetic telegraph company's stock at par, and close the transfer and mutual discharges.

"Depend upon it, the stupendous claims on me, which Mr. Kendall illumines only with the phosphorus of his imagination, will all evaporate into thin air whenever the judicial wand shall touch them, for they have no foundation whatever.

"Let my offers be declined, and the questions of law now ready for argument be settled, and you will then believe it, if not sooner. But my proposals are not offered to await that ordeal. They are withdrawn unless acceded to previously. You must not expect a title established by conquest to be thrown away by compromise. Let the word be amicable, or let it be hostile.

"That I have longed to be rid of all telegraphic interests is a reason why for the last three years I have projected no counter movement to any one. But seeing I cannot get out of the vortex without ruinous sacrifice, I have been shaping my business for a few months past to resume active participation in prosecution of my interests in the business and to enlarge them as opportunity offers, without embarrassment. I had despaired of all compromise with you; supposed we were both doomed to fight out every with a certainty of no inconsiderable loss to us both, considering that 'to this complexion has it come at last.' I have been on the eve of suggesting to you what I suppose will be for equal advantage, convenience, and satisfaction to both, viz: to furnish each other with complete copies of our correspondence, from the earliest of intercourse to the period when each commenced to preserve copies of his letters to the other. I have one complete copy now in progress by a good copyist. If you will furnish me a copy in turn of all my letters to you, I will have another copy of yours to me made for yourself.

"A reply to-day, especially on this latter subject, at room 92 Astor House, will oblige me.

"Most respectfully, your obedient servant,

"FRANCIS O. J. SMITH."

To the above this defendant received a reply, as follows, from the said Morse:

"NEW YORK, *May 7th*, 1855.

"SIR: I have received yours of this date, and am glad to find that you are ready to have all matters of difference between us settled by arbitration. This mode, it strikes me, is the readiest and most reasonable mode of ending the litigation, and the trouble which litigation brings in its train, and if entered upon immediately, will undoubtedly be the speediest mode of disposing of the strife.

"I am any moment ready to name one of the arbitrators if you will name the other, which two shall name an umpire, and the three shall decide on everything on which we differ. I shall be ready to enter into bonds in the way to comply with the award of the arbitrators.

"In case of your acceding to this arrangement, our counsel to-morrow, instead of arguing the case in court, may be employed in drawing up the arbitration bonds.

"Most respectfully, your obedient servant,

"SAMUEL F. B. MORSE.

"FRANCIS O. J. SMITH, Esq., 92 Astor House.

"P. S. An answer will reach me either at Observer Office, Nas-

san street, or at my brother's, No. 33 East 22d street. Please answer this evening."

To which this defendant replied as follows:

"NEW YORK, *May 7th*, 1855.

"Prof. S. F. B. MORSE:

"SIR: I am this evening in receipt of your favor in reply to mine of this day.

"I am surprised you interpret my letter into a readiness to have all our matters of difference between us settled by arbitration, and dispense with the argument of your suit against me now in court ready for argument.

"I certainly could have conveyed no such proposal had you read my letter with your usual care. I stated that time and again I had offered arbitration, which had as often failed.

"I stated my own conviction, that if you were the guiding mind in making an adjustment, you and I could in half a day settle all differences. But, I stated my understanding of the reason you feel for not undertaking it. I then renewed my former proposal for a settlement by an outright transfer of my interest to you, which offer I limited to the period preceding the approaching argument of your case. This was my only proposal, added to that of a 'toe to toe' investigation of our differences, excepting that for an interchange of copies of past correspondence. I regret you should have interpreted the letter otherwise.

"Your proposal for an arbitration I must decline, as it would defeat all the lights hoped for from a judicial exposition of the law that must govern our respective claims in matters of account. I wish no postponement of the trial, if trial we are to have.

"I hope, on the other inquiry of my letters, as to whether my legal title to one-fourth of the extended patent, is or is not to be recognised by you, you will be able to afford me an early and definite answer. I am the more anxious for this, inasmuch as I have, since writing you my former letter to-day, been informed by an actor in the matter, that a proceeding for the repeal of that patent is in the course of preparation, on the ground of fraudulent allegations in its acquirement.

"A copy of your affidavit in the matter I never before had seen.

"Most respectfully, your obedient servant,

"FRANCIS O. J. SMITH."

To the above letter this defendant received no reply. And hence this defendant avers, that while he was awaiting the fulfilment of said Morse's promise to inform this defendant whether he did or not intend to persist in denying this defendant's one-fourth ownership in said extended patent, his agent was engaged in

making negotiations for the sale of exclusive rights under said patent, and covertly denying all rights to this defendant therein, contrary to equity and good conscience, and the obligations of said Morse's aforesaid contract and deed to this defendant.

This defendant further answering, saith that by the terms of this defendant's purchase of his said one-fourth part of said invention, and of all letters patent which said Morse might or should thereafter obtain therefor under the laws of the United States, it was not incumbent on this defendant to perform any services whatever, or pay any expenses, in respect to said extension, unless called on so to do by said Morse; and said Morse avers truly in his said bill, that no such requisition was made by him for such, or either of said purposes, upon this defendant, who avers that he was ready at all times to do and perform all and singular the services, stipulations, and undertakings agreed on and entered into or described in and by said articles of contract that are in and by said amended bill mentioned; and this defendant avers that he has at all times, in good faith, fulfilled and performed all his said services, stipulations, and undertakings, and is still ready and willing so to perform and fulfil the same, to the extent of his obligations in and by said contract created.

This respondent further answering saith, that it is wholly untrue that this defendant sold to said Brewer any interest in and to the use of said letters patent, separately and apart from said Morse and Vail, until after this defendant had been informed by said plaintiff Clum, that said Morse and Vail, by their said sole and exclusive attorney, Amos Kendall, had wholly denied this defendant's right and title in and to said letters patent, or any of them, and that said Clum had absolutely bargained for and arranged to purchase of said Morse and Vail, through their said agent and attorney Kendall, acting wrongfully in the premises, a deed purporting to convey the whole and exclusive title to own and use said invention and letters patent within the limits and territory described in said bill of complaint; and that before said Clum had thus made said purchase, this defendant had proposed and offered to sell this defendant's title to said use of said letters patent conjointly with said Morse and Vail, and at the same proportional price for one-fourth part thereof as the said Morse and Vail, by said Kendall, would sell their title to said three-fourths of said use; and this defendant avers, that it would be unjust and inequitable for said Morse and Clum to restrain this defendant from making said sale, under the circumstances by them so created, for the purpose of denying this defendant his just rights and property in said invention and letters patent, and while they claimed the right to sell said title without the concurrence of this defendant.

This defendant further answering, saith, that he believes, and is informed, that his title to and right of interest in one-fourth

part of all said Morse's aforesaid letters patent, inclusive of letters patent for all improvements therein made by said Morse, and inclusive of all extended letters patent for said invention which said Morse has acquired or may acquire under the laws of the United States, is valid, in both law and equity; that he has paid a valuable consideration to said Morse for the same, and commenced so to do at a period when the same were utterly worthless otherwise to said Morse, and when said Morse had neither means nor ability to give any value thereto, or to make sale thereof to any other person; that this defendant labored for years thereafter, and expended large sums of money in giving value to said inventions, in aiding said Morse to protect it, and in introducing it for use by the public, and long before said Kendall, as agent of said Morse, had any agency whatever in the invention.

All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in that behalf sustained.

FRANCIS O. J. SMITH.

UNITED STATES OF AMERICA,
District of Maine.

December 8, 1856.

Then personally appeard the above named Francis O. J. Smith, before me, and made oath that the matters and things above named are true, so far as the same are stated of his own knowledge; and that so far as they are stated on the information of others, he believes them to be true.

Before me—

JAMES O'DONNELL,
A Commissioner for the State of Massachusetts.

Exhibit A.

Whereas Samuel F. B. Morse has invented an electric telegraph, denominated by him the American Electro-Magnetic Telegraph, and has secured the same by letters patent of the United States, bearing date the 20th of June, 1840, which letters having been twice surrendered, were finally reissued the 13th June, 1848:

And whereas the said Morse has also invented certain improvements in said telegraph, which he has also secured by letters patent of the United States, bearing date the 11th of April, 1846, which letters patent, having been surrendered, were finally reissued the 13th of June, 1848; and whereas, by sundry instruments of writing, duly executed and recorded in the Patent Office of the United States, according to law, Alfred Vail and Francis O. J. Smith became jointly interested with said Morse in unequal parts, in said electro-magnetic telegraph; and whereas, by sundry other

instruments of writing, also duly executed and recorded in the Patent Office of the United States, according to law, Amos Kendall was constituted the sole agent of the said Morse and Vail, with full power to sell and convey their interest in said invention, with all the improvements thereon: Now, therefore, we, Samuel F. B. Morse and Alfred Vail, by our attorney, Amos Kendall, and Francis O. J. Smith in his own right, in consideration of the sum of two hundred and sixty dollars ($260) to us in hand paid by J. Dixon Roman, William M. Marshall and Howard Kennedy, trustees for building a line of telegraph from Hagerstown to Frederick city, receipt whereof is hereby acknowledged, have granted, bargained and released, and do, by these presents, convey and confirm unto the said Messrs. Roman, Marshall and Kennedy, trustees as aforesaid, their assigns and legal representatives, the exclusive right to construct and use the said telegraph invention between Hagerstown and Frederick city, both in Maryland, the distance being twenty-six (26) miles:

To have and to hold to the said trustees as aforesaid, their assigns and legal representatives, during the legal existence of said patents, and of all patents which may hereafter be issued in renewal or extension thereof, to the same extent that the said patentees might have held such right had this conveyance never been made.

Witness the hands and seals of Messrs. Morse and Vail, by their attorney, this 9th day of December, A. D. 1853, at Washington, D. C.

SAMUEL F. B. MORSE, [L. S.]
ALFRED VAIL. [L. S.]
By their Attorney,
AMOS KENDALL.

In presence of—
WILLIAM STICKNEY,
JNO. E. KENDALL.

FRANCIS O. J. SMITH. [L. S.]

Witness to signature of F. O. J. Smith—
NATH. GROTON.

Exhibit B.

Whereas Samuel F. B. Morse has invented an electric telegraph, denominated by him the American Electro-Magnetic Telegraph, and has secured the same by letters patent of the United States, bearing date the 20th of June, 1840, which letters patent having been twice surrendered, were finally reissued the 13th of June, 1848:

And whereas the said Morse has also invented certain improvements in said telegraph, which he has secured by letters patent of the United States, bearing date the 11th day of April, 1846, which

letters patent having been surrendered, were reissued the 13th of June, 1848:

And whereas, by sundry instruments of writing, duly executed and recorded in the Patent Office of the United States, according to law, Francis O. J. Smith and Alfred Vail became jointly interested in unequal parts with said Morse in said electro-magnetic telegraph:

And whereas by sundry other instruments of writing also duly executed and recorded in the Patent Office of the United States, according to law, Amos Kendall was constituted the sole agent of the said Morse and Vail, with full power to sell and convey their interest in said invention and the improvements thereon:

Now, therefore, we, the said Morse and Vail, by our attorney aforesaid, and Francis O. J. Smith in my own right, and each one of us in proportion to our respective interests in said telegraph, in consideration of the sum of three thousand dollars to us in hand paid by C. C. Clute, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do release, convey and confirm to the said C. C. Clute, his heirs, assigns and legal representatives, the exclusive right to construct and use the aforesaid telegraph, with all the improvements thereon, on the line extending from New Orleans, by way of Algiers, Thebidoux, Pattersonville, Franklin, New Iberia, St. Martinsville, Vermillionville, Grand Coteau, Opelousas, and Washington, to Alexandria, all in the State of Louisiana, the distance being about two hundred miles:

To have and to hold the said exclusive right unto the said C. C. Clute, his heirs and assigns, together with all the improvements thereon, and all patents that may be hereafter issued in renewal or extension thereof, to the same extent that the said Morse, Vail and Smith might have held and enjoyed such right had no sale or conveyance thereof ever been made.

Witness the signature and seal of the said Morse and Vail, by their attorney, at Washington, this 7th day of June, A. D. 1854.

SAMUEL F. B. MORSE, [L. S.]
ALFRED VAIL. [L. S.]
By their Attorney,
AMOS KENDALL.

In presence of—
WM. STICKNEY,
JOHN KENDALL.

FRANCIS O. J. SMITH. [L. S.]

Witnesses to signature of F. O. J. Smith—
FRANCIS B. SMITH,
ELLEN E. K. SMITH.

And thence this cause was continued to this present term, when the same came on to be heard on bill and answer, and was argued by counsel; and thereupon, and upon consideration thereof, it is

ordered, adjudged and decreed by the court, that the plaintiff's said bill be, and the same is hereby, dismissed, with costs for the respondents taxed at fifty-seven dollars and seventy-nine cents.

At the term of the said court begun and holden at Boston aforesaid, before the Hon'ble Peleg Sprague, district judge, on the 15th day of October, A. D. 1857, to wit, January 4th, 1858, the following petition was filed in court, viz:

To the honorable the Justices of the Circuit Court of the United States for the district of Massachusetts:

Samuel F. B. Morse, one of the complainants in the cause of William B. Clum and others, in equity, vs. Charles H. Brewer and others, in which the bill was dismissed at the last term of this court, comes and represents to the court, that the amount in controversy in this cause exceeds the sum of two thousand dollars, and that he, the said Morse, desires to appeal from the final decree dismissing the said bill to the Supreme Court of the United States, to be holden on the first Monday of December, A. D. 1858; that he is not advised whether the other complainants will join in the said appeal: Wherefore, he prays that a summons may be issued to the said William B. Clum to appear in this court and elect to join in the said appeal, or to decline so to do.

And the said Morse further prays, that his appeal be allowed on the filing of an appeal bond in the sum of two hundred dollars, conditioned to pay all such costs as the respondents may recover or be entitled to claim.

SAM'L F. B. MORSE.
By his Att'y,
GEO. T. CURTIS.

The foregoing petition having been read and understood by the court, it is thereupon ordered, that a summons be issued to the said William B. Clum to appear before this court, on Monday, the first day of February next, at ten o'clock a. m., to elect either to join in said appeal, or to decline so to do; and that the further hearing of the matter of the said petition be now postponed to that time.

And thereupon a summons issued to said Clum, as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss.

[SEAL.]

To William B. Clum, of Roxbury, in the county of Norfolk and State of Massachusetts, one of the complainants in the cause of William B. Clum and Samuel F. B. Morse, in equity, vs. Charles H. Brewer, A. J. Baldwin, John T. Smith and F. O. J. Smith, greeting:

For certain causes offered before the circuit court of the United

States of America for the first circuit, within and for the Massachusetts district, as a court of chancery, we command and strictly enjoin you, laying all other matters aside, and notwithstanding any excuse, that you personally be and appear before our said circuit court, on the first Monday, being the first day of February next, to elect whether you will join in the appeal prayed for by the said Samuel F. B. Morse in the said cause, from the final decree by which the said bill was dismissed at the last term of this court, and to do further and receive that which our said circuit court shall consider in this behalf; and have you there this writ.

Witness the Honorable Roger B. Taney, at Boston, this fourth day of January, A. D. 1858, in the eighty-second year of the independence of the United States of America.

H. W. FULLER, *Clerk.*

And the same was duly returned into court, with the following return thereon, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss.

BOSTON, *January 4th*, 1858.

I hereby certify that I have notified the within named Clum, by giving in hand to Augustus Russ, his solicitor, a true and attested copy of the within.

W. FREEMAN, JR.,
Dep. U. S. Marshal.

And now, to wit, February 1st, 1858, William B. Clum, who was a joint complainant with said Morse, having been cited to elect either to join in the appeal claimed by said Morse, or to decline to do so, and having failed to appear, and no objection being made to the allowance of the appeal of said Morse to the said Supreme Court of the United States, it is ordered by the court that such appeal be allowed.

And the said Morse having furnished good and sufficient security to prosecute his said appeal with effect, and to answer all damages and costs if he shall fail to make the same good, the said security was approved by the court, and placed on file.

UNITED STATES OF AMERICA,
Massachusetts District, ss.

BOSTON, *February 19th*, 1858.

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of William B. Clum and al., in equity, vs. Charles H. Brewer and als.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Boston, this nine-
[SEAL.] teenth day of February, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States of America the eighty-second.

H. W. FULLER, *Clerk.*

Citation.

UNITED STATES OF AMERICA,
Circuit Court of the U. S., Massachusetts district, ss.

To Charles H. Brewer, A. J. Baldwin and John T. Smith, all of Boston, in said district, and Francis O. J. Smith, of Portland, in the district of Maine, greeting:

You are hereby cited and admonished to be and appear before the chief justice and the associate justices of the Supreme Court of the United States, at Washington, in the District of Columbia, (the present seat of the national government,) on the first Monday of December next, then and there to make answer to Samuel F. B. Morse, of Poughkeepsie, in the State of New York, appellant, in a certain cause in equity, wherein said Morse and William B. Clum, of Roxbury, in said district of Massachusetts, were joint complainants in a bill in equity, filed in our said circuit court against you, as defendants; which bill was dismissed with costs for the defendants, by a final decree of said circuit court at the May term thereof, A. D. 1857; said Morse having claimed an appeal therefrom to said Supreme Court of the United States, and such appeal having been allowed by said circuit court, and security given to prosecute the same to the effect of obtaining a reversal of the said final decree rendered in said circuit court.

Witness my hand, at Boston, in said district of Massachusetts, this fifth day of February, A. D. 1858.

P. SPRAGUE,
Judge of the U. S. Massachusetts district.

Service acknowledged Feb'y 19, 1858, by
R. CHOATE & BELL,
Pl'ff's Att'ys.